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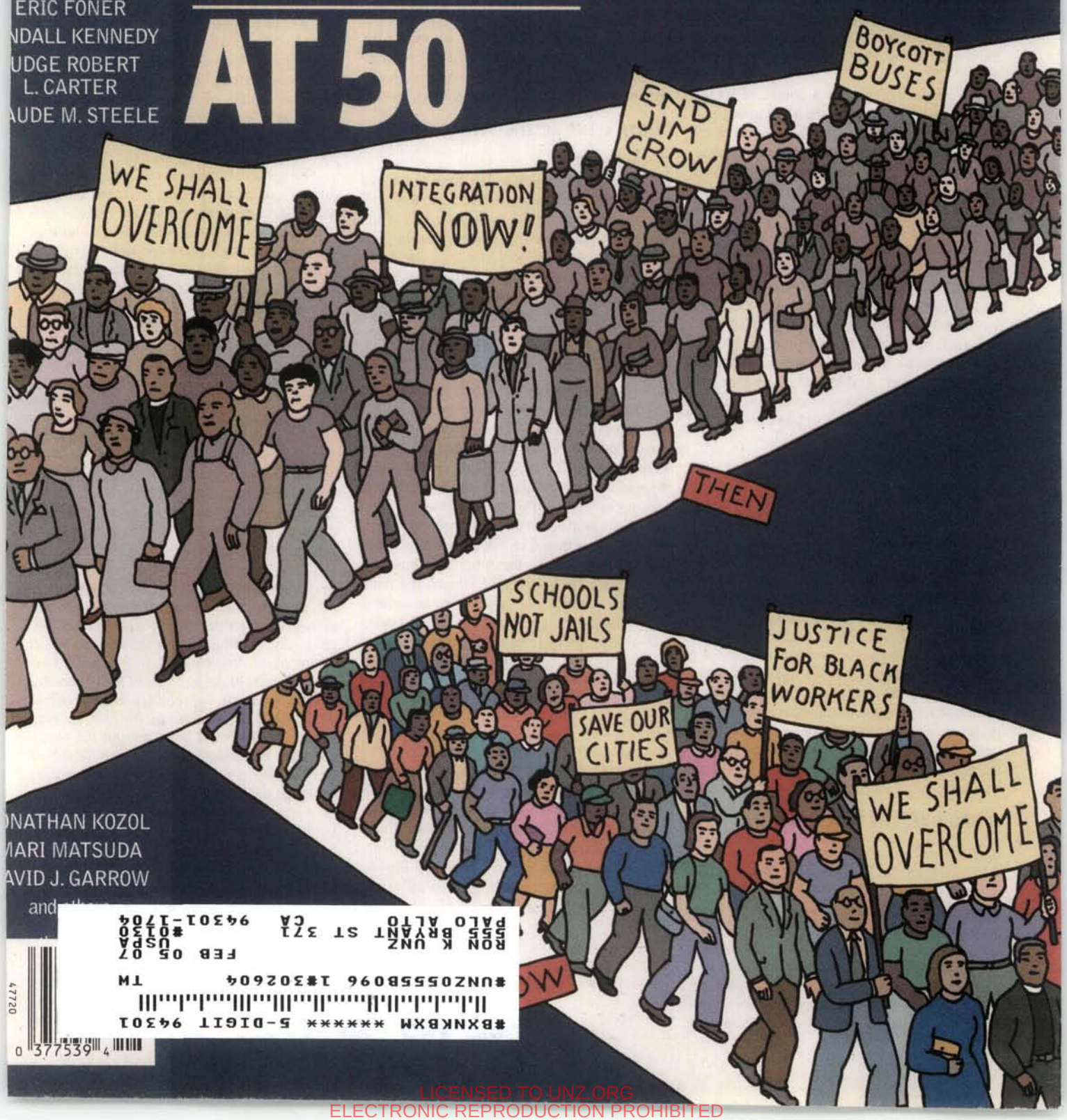

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LETTERS

Letters

CHRISTOPH NIEMANN

WMD? HA HA HA!

Louisville, Ky.

■ In "Laughing With Bush" [April 19], David Corn quotes GOP chairman Ed Gillespie, talking about George W. Bush's missing WMD jokes at a gathering of reporters, saying, "The people in the room obviously saw the humor... and to play it back now in a different context is unfair."

It's interesting that for a couple of weeks straight, I couldn't turn on the TV without seeing the "Dean Scream." *That* footage was taken out of context—if you were there it didn't come across as it did on TV; Dean was simply raising his voice over the crowd—but the media had no problem milking it for all it was worth. But of Bush making a joke out of his false WMD claims, I haven't seen one bit of TV footage.

I'm sad and frustrated that important issues like the lying by our Administration about this war, the state of the economy, etc., are ignored by the mainstream media. Apparently "wardrobe malfunctions" are important enough to talk about for weeks, but no one wants to talk about what our President and his Administration are really up to. How is anyone ever to learn the truth? CARMEN PAXTON

YOU CAN HELP—I

Philadelphia

■ Thank you for Mariana Katzarova's "Letter From Juárez" [March 29]. *Nation* readers should urge their Representatives to co-sponsor HR 466, introduced by Hilda Solís of California: "Conveying the sympathy of the House of Representatives to the families of the young women murdered in the state of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes." The more co-sponsors HR 466 has, the stronger the message it can send to the Mexican government to fund adequately and otherwise support investigations and prosecutions. To echo the quote from Eve Ensler in Katzarova's piece, we need to demonstrate that "the world is watching." ELLEN SLACK

IT BROUGHT THE WAR HOME

Burlington, Vt.

■ I thank Marianne Brown for her deeply touching letter about her son ["Letters," April 5]. This war and all the mess surrounding it have been so disturbing and infuriating, yet at a distance up here in Vermont. But "One Mother's War" went directly into my heart, and I cried and cried thinking of her son, my son, other people's children in harm's way. May Michael come home safely and heal. HANNAH DENNISON

YOU CAN HELP—II

Washington, DC

■ In response to Robert Musil's March 29 letter to the editor, Representative Lynn Woolsey recently introduced SMART security with Physicians for Social Responsibility and twenty Congressional co-sponsors. The bill number is HR 392. *Nation* readers should get their Representatives to support this bill. It would be greatly appreciated. SUSAN CERNOJEVICH

DUBYA & THE SCIENCE-WHACKERS

Bronxville, NY

■ Robert F. Kennedy Jr.'s "The Junk Science of George W. Bush" [March 8] laid out very well that politics comes before science in this White House. The Bushwhacking of two leading scientists who disagree with him from the President's Bioethics Council, and the FDA's three-month delay on the over-the-counter status of Plan B emergency contraception, are two more telling examples. THOMAS FOLEY

Eugene, Ore.

■ Robert F. Kennedy Jr.'s cover story on the Bush Administration's junk science is a vital opening salvo on an issue broad enough to cut across electoral lines. Bush's flagrant lie on stem-cell research is additional ammunition. Soon after being installed, Bush limited federal funding of stem-cell research to then-existing cell lines, assuring the nation on network television that more than sixty such lines were available. Experts outside the Administration gave the President the benefit of the doubt. But soon, alas, they realized that only twelve or so lines were actually available—not enough to support scientific progress. In hindsight, we can see that Bush's sixty-cell-line claim was an early example of the smoke-screening his Administration so shamelessly deploys. CARL SAMUELS

Carmel, Calif.

■ As an outraged scientist, I want to thank you for the hardest-hitting, best-substantiated article I've seen on what Bushite pseudoscience is doing to us. I've just completed a study based on the work of the multinational, multidisciplinary General Evolution Research Group over more than a decade, which documents how Bushite policies are driving us backward on *all* fifteen levels of evolution identified in our new book *The Great Adventure: Toward a Fully Human Theory of Evolution*. I believe it's a must-read for everyone concerned about the environment, cultural as well as physical. DAVID LOYE
The Darwin Project
www.thedarwinproject.com

Palo Alto, Calif.

■ Thank you for publicizing these investigations showing that George W. Bush's science intends to prove that up is down and black is white. After Congressman Henry Waxman's report last August about the Administration's abuse of science in government policy, a group of graduate students at Stanford University began their own investigations into the Administration's abuses of science. We found a pervasive trend of manipulating scientific information and undermining objective scientific research, always with the goal of promoting policy that appeals to industry, lobbyists or the religious right.

Our group of scientists released a statement (at www.scienceinpolicy.org, signed by more than 1,100 scientists from all fifty states) condemning the Bush Administration's abuse of our scientific work. We hope to let the public know that this is yet another topic on which we cannot trust the Administration to be honest with the American people. MACIEJ F. BONI
Stanford University
Department of Biological Sciences

Paonia, Colo.

■ As assistant editor of *High Country News*, which has tracked Western environmental issues for thirty-three years, I am pleased to see that the Bush Administration's habit of manipulating science is gaining national attention.

The author mentions the fish kill on the Klamath River—where more than 33,000 salmon died in tepid, low-flowing waters. It was not an unexpected event. California state and tribal biologists warned that a fish kill would occur if the Interior Department continued diverting the majority of the river for irrigation. But Interior hit back with its own "science," highlighting a report that showed higher water levels didn't necessarily benefit fish. When federal biologist Michael Kelly blew the whistle, revealing that politics had influenced decisions, his superiors called him "naïve." When the fish went belly-up and the media started to realize something stank, it turned out that Karl Rove, not biologists, was influencing policy on the Klamath.

Sadly, this isn't an isolated incident: Countering legitimate science with the work of charlatans is routine in the Bush White House—from the National Park Service allowing more snowmobiles in Yellowstone, the Bureau of Land Management prioritizing oil and gas drilling on 261 million acres of public lands, the Forest Service approving logging projects under the "Healthy Forests Initiative" or the Environmental Protection Agency approving dangerous pesticides that harm wildlife and farmworkers.

(Continued on Page 44)

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Printed April 14 Volume 278, Number 17

IN THIS ISSUE

2 **LETTERS**

EDITORIALS & COMMENT

3 THE HAUNTED ARCHIVES
4 PRIME-TIME FABLES
5 IRAQ AS VIETNAM
William Greider
6 ASHCROFT ATTACKS
David Corn
6 THE UN OIL "SCANDAL"
Ian Williams
7 TAKING LIBERTIES
Guantánamo, Revisited
David Cole
9 ELECTION MATTERS
The GOP Hunts Its Own
John Nichols
11 EDUCATING SENATOR FRIST
Paul Brodeur

COLUMNS

5 DEADLINE POET
Condoleezza's Silver Bullet Theory...
Calvin Trillin
13 BEAT THE DEVIL
The Two Parties of Empire
Alexander Cockburn
14 DIARY OF A MAD LAW PROFESSOR
Unimagined Communities
Patricia J. Williams

ARTICLES

15 *BROWN* AT 50
Eric Foner and Randall Kennedy
17 BEYOND BLACK, WHITE AND *BROWN*: A FORUM
Adolph Reed Jr., Pedro Noguera and Robert Cohen, Mari Matsuda, Frank H. Wu, Asa Hilliard III, Patricia Sullivan, Jacquelyn D. Hall, Jonathan Kozol
24 IT COULD HAVE GONE THE OTHER WAY
Michael J. Klarman
28 THE LONG ROAD TO EQUALITY
Robert L. Carter
30 THE "FIFTH CIRCUIT FOUR"
Jack Bass
32 THE HEAT OF SUMMERTON
Alan Richard
36 A DREAM DEFERRED
Michael Honey
38 NOT JUST A TEST
Claude M. Steele
41 WHAT'S GOOD ENOUGH?
Peter Schrag

BOOKS & THE ARTS

45 KLUGER: Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality
TUSHNET: Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961
David J. Garrow
50 SANDBROOK: Eugene McCarthy: The Rise and Fall of Postwar American Liberalism
Jon Wiener
54 VOLKOV: Shostakovich and Stalin
Paul Mitchinson
57 WHY THE BUBBLE POPPED
A Clutch of New Books Surveys the Boom and Bust of the New Economy
Robert Sherrill

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EDITORIALS

The Haunted Archives

Who should control access to the archives of the 9/11 Commission after it closes up shop in August? The commission's records will go to the National Archives. On April 8 the Bush Administration quietly pushed the current archivist, John Carlin, a Clinton appointee, to step down. To replace him, Bush will nominate Allen Weinstein, a historian who has been criticized for failing to abide by accepted scholarly standards of openness (more details will appear in an upcoming *Nation* profile). Weinstein headed, until recently, the Center for Democracy, a think tank whose board is studded with GOP heavyweights, including Senators Kay Bailey Hutchison and Richard Lugar, House Republican whip Roy Blunt and Henry Kissinger.

The national archivist is crucial in a democratic society: He preserves our history and makes government records available to the public. He should also serve as an advocate for greater openness. The Senate is required to confirm the nomination, and the last time around, in 1995, the White House nominee was opposed during that process by organizations of historians and archivists (who regarded Carlin as unqualified). This time, the White House reportedly hopes to avoid hearings and instead plans to attach a confirmation bill to some other piece of legislation, perhaps as early as May. This would leave a Republican appointee in charge of not only the 9/11 Commission archives but all other Bush White House documents.

The surprise move to replace the archivist violates the spirit of a 1984 law that sought to depoliticize the office. The archivist, according to that bill, is not a political appointee who serves at the pleasure of the President, and his term is not tied to the term of the President, although the President can ask for his resignation. A House report in 1984 said Congress "expects" the nomination of a new archivist "will be achieved through consultation with recognized organizations of professional archivists and historians." There has been no such consultation.

Bush's move is part of a larger pattern of expanded White House secrecy, starting with its fight to conceal the names of members of the Cheney energy task force and continuing with the recent effort to prevent the 9/11 Commission from revealing such documents as the now-famous Presidential Daily Briefing of August 6, 2001. It's true that all Presidents want to control access to their papers, but it's the responsibility of the archivist to see that access is "free, open, equal, and nondiscriminatory," as the Statement on Standards of the American Historical Association puts it.

Senate confirmation hearings are essential because Weinstein's record, especially on access issues, is bad. His 1999 book *The Haunted Wood* has been criticized for its flawed handling of archival materials. His publisher paid for exclusive access to Soviet archives, and no one else has been allowed to see the documents he quotes (see Ellen Schrecker, "The Spies Who Loved Us?" May 24, 1999). This appears to violate the code of ethics of the International Council on Archives, which calls for "the widest possible access" to documents. His earlier book, about Alger Hiss,

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has been criticized for politically motivated withholding of documents: Weinstein has refused to make his interviews on the Hiss case available to historians who disagree with him, which violates the Standards of the American Historical Association (see Victor Navasky, "Allen Weinstein's Docudrama," November 3, 1997).

A single senator can put a hold on a presidential nomination, which prevents it from going forward without debate. This should be done promptly. Then the Senate Committee on Governmental Affairs, chaired by Susan Collins—with Joseph Lieberman as ranking Democrat—has an obligation to hold confirmation hearings. The American people need a better custodian of their history.

Prime-Time Fables

George W. Bush believes in the Easter Bunny—that is, those weapons of mass destruction. At his recent press conference, during which he appeared unable to connect to reality on this matter or the unfolding situation in Iraq, he declared, "I'm of the belief that we'll find out the truth on the weapons.... They could still be there. They could be hidden." Technically, he's correct; they could be. But it was as if Bush had missed all the statements of former weapons hunter David Kay, who said that the reason no WMDs have been located is that Iraq in recent years no longer had the capability to make such weapons on a significant scale. Still, Bush keeps talking about the weapons as if they exist.

His ability to hold tight to an alternative reality in the face of contrary evidence was repeatedly on display. He once more baselessly depicted Saddam Hussein as an "ally" of the 9/11 terrorists as he continued to conflate the war in Iraq with that against Al Qaeda. He insisted that Iraq had been a "gathering threat" without explaining what exactly had been "gathering." As Bush noted, Saddam used chemical weapons two decades ago (while being courted by the Reagan/Bush Administration) and supported "terrorists" (who targeted Israel). But how had that made him a "direct threat" to the United States? Bush didn't say. In defending his decision to invade Iraq, he said the war had been fought in part to enhance the credibility of the United Nations: "The war on terror had changed the calculation. We needed to work with people. People needed to come together." Huh?

Bush refused to acknowledge any errors or miscalculations before or after the invasion. Nor did he have a good answer—or any answer—as to what entity in Iraq the United States will hand governing power to on June 30 or what he sees as a US exit strategy. He dismissed the recent rise in violent opposition to the US occupation and stuck to stay-the-course rhetoric. And he dismissed critics of his policies as racists: "Some of the debate really centers around the fact that people don't believe Iraq can be free; that if you're Muslim, or perhaps brown-skinned, you can't be self-governing or free." Is that really what's motivating his opponents who charge he lied the country to war and had no good idea of what to do with Iraq once he had it? At the end of the questioning, Bush commented, "One thing is for certain, though, about me, and the world has learned this: When I say something, I mean it." Even if—or especially if—it has no basis in reality.

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COMMENT

Iraq as Vietnam

It is a pity the major news media have not convened a commission of inquiry to examine their own mistakes and derelictions concerning the war in Iraq. Wouldn't it be instructive to go back now and re-examine the "documents" the press and television provided Americans to understand why the United States must invade and conquer? Many of the news stories would sound quite naïve and gullible (also hysterical) in light of present events. The patriotic banners that accompanied TV news reports would look irresponsibly biased. Remember those investigative reporters uncovering Saddam's secret weapons like bomb-sniffing dogs? Remember the bellicose columnists and editorial writers who called for war with grotesque self-confidence?

Of course, news people don't look backward. No time for self-examination when they are caught up in the "new" news—a commission in Washington examining whether the White House failed its duty to thwart terrorism; the bloody unraveling of "nation-building" in Iraq. Both are suspenseful stories and compete for the main headlines.

Why do I feel melancholy rather than excitement? When reporters reach an advanced age, they sometimes become burdened by memory (assuming their brains are still functional). One can begin to recognize that much of the news is actually an old story—recycled versions of the human folly committed by previous generations. To my eyes, the insurrection under way in Iraq looks like "little Tet"—a smaller version of the original Tet offensive the Vietcong staged in 1968. It shocks Americans in much the same way. Iraq is a "little war" compared with Vietnam, but Americans are learning, once again, that the indigenous people we "liberated" do not love us. Many want our occupying army to withdraw. Insane as it may seem to Americans, they are willing to die for this objective. But what about the schools and roads we built for them?

Every day I hear echoes from the past. George W. Bush even invokes the same phrase—"stay the course"—that four decades ago was understood, ironically, as an expression of official obstinacy and ignorance. A prominent newspaper columnist, one of the most ardent advocates of this war-for-democracy, scolds the "silent majority" in Iraq, urging them to stand up against the killers and proclaim their solidarity with the US troops. He seems angry at their cowardice. His kind of frustration was a constant theme during Vietnam too.

When popular resolve among the Vietnamese disappointed Washington, US strategists would change the government in Saigon. The US proconsul in Baghdad, Paul Bremer, fired the interior minister in charge of the Iraqi police we trained to maintain civil order, because they fled the police stations rather than shoot it out with their countrymen. The "hearts and minds" thing was never resolved in Vietnam either. After the Americans withdrew, they discovered that some of their Vietnamese employees (even in news bureaus) had been Vietcong agents all through the war.

What did you learn from that war, Grandpa? Like most Americans, I never saw the battlefield in Indochina, but I did learn painful, indelible lessons as a citizen. My grandchildren are watching this war on television, so I will tell them: I learned that the government sometimes lies to the people—big lies with awful consequences—and sometimes government begins to believe its own lies. As a reporter, I learned with embarrassment to listen to the people in the street, because sometimes they tell you things the government is concealing. Again and again, antiwar dissenters and civil-rights activists told me the FBI and CIA were spying on them, tapping their phones, infiltrating their ranks and disrupting their organizations. The stories I dismissed as paranoia all turned out to be true. I also learned that military conquest, regardless of the stated intentions, seldom succeeds in creating democracy.

The war in Iraq is different from Vietnam in one fundamental respect: A substantial portion of Americans (and others around the world) were in the streets protesting this venture before the shooting started. The media generally dismissed them and often caricatured the protesters as aging hippies on a sixties nostalgia trip. It's a pity reporters didn't listen more respectfully. Virtually every element of what has gone wrong in Iraq was cited by those demonstrators as among the reasons they opposed the march to war.

How could such forgetfulness prevail, especially among a smart, engaged group like news people? It is perhaps not as sinister as it sounds. Most of the men and women now in charge of the news processes were boys and girls during Vietnam. The youngest reporters were not yet born. Their generation, I imagine, experienced the war more distantly as a disturbed era that ended in national humiliation. An air of shame hung over their growing-up years, a residue of bitterness and guilt all around. Did Americans wimp out? Did the news media poison their patriotism? My hunch is that many of today's reporters and editors came to think so and were determined to be less squeamish, more "manly" about warmaking. Editors over 50 can't hide behind this excuse.

It also matters that Americans are taught a triumphalist version of our history that typically blots out the darker passages. The Moro War in the Philippines went on for many long years and was as brutal as Vietnam, with torture and massacres by frustrated soldiers. Does anyone remember the Moro War? US troops were trying to suppress a guerrilla insurrection in this new US colony. The resistance was centered on the same island province where "Muslim terrorists" have recently appeared as a "threat" to civilization.

CALVIN TRILLIN

Condoleezza ("Mushroom Cloud") Rice Explains Her Silver Bullet Theory To the 9/11 Commission

Because no silver bullet could have stopped
This horrifying deed from being done,
We cannot blame those dozing on the job
For never even loading up the gun.

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COMMENT

"Tell me how this ends?" an American field commander asked a battlefield reporter. I will tell him how it ought to end: Declare victory and get out. Withdraw now, not later, as responsibly as this can be arranged. That wise formulation was first proposed during the bloodiest Vietnam years by the late Senator George Aiken, a Vermont Republican. Neither LBJ nor Nixon had the courage to listen. "Stay the course." "Light at the end of the tunnel." "Peace with honor." The war continued for years, with many more deaths on both sides and eventual defeat for ours. US military power can proceed now to pulverize the cities of Iraq, but there is no victory ahead, only more killing, and when it is over, a well-earned sense of shame. WILLIAM GREIDER

Ashcroft Attacks

When faced with criticism, accuse. That seems to be Attorney General John Ashcroft's rule of political survival. When called before the 9/11 Commission to discuss the Justice Department's and the FBI's responses to the Al Qaeda threat before 9/11, he blasted away: at the Clinton Administration, at the commission (one member in particular) and at unnamed Patriot Act critics. He admitted no errors. And he barely addressed the questions raised about his own actions before 9/11.

Interim reports of the 9/11 Commission note that the FBI Ashcroft inherited from Janet Reno was a mess (the computer system was decrepit, 66 percent of its analysts were unqualified to do their jobs, intelligence collection was woefully mismanaged) and that the bureau and the Justice Department had not regarded counterterrorism as a top priority. The reports also indicate that Ashcroft did little to change the status quo. In spring 2001, according to the commission, the Justice Department prepared an FBI budget that did not increase counterterrorism funding (bolstered in the first budget of the Bush Administration). On September 10 Ashcroft denied a request from the FBI for $50 million for additional counterterrorism agents and resources. Thomas Pickard, acting FBI director in mid-2001, told the commission that in summer 2001 he met with Ashcroft to brief him on the surge of intelligence related to terrorist threats but that after two such briefings Ashcroft told him he was not interested. (Ashcroft denies this.)

Ashcroft had a lot of FBI issues on his plate: the Wen Ho Lee investigation, FBI agent Robert Hanssen's espionage, mishandling of documents in the Timothy McVeigh case. Perhaps it was natural that, as a commission report says, the FBI's "counterterrorism strategy was not a focus of the Justice Department in 2001." Rather than acknowledge or explain this, Ashcroft came before the commission loaded for bear. He waved a mid-1990s Justice Department memo his department had just declassified, which he claims was the origin of the so-called wall that separated investigations of terrorists from criminal inquiries and which he and others blame for impeding counterterrorism efforts. This memo had been written by 9/11 commissioner Jamie Gorelick when she was Deputy Attorney General in the Clinton Administration. (Its relevance, one commission official later said, was "almost none": It merely laid out rules for one case, in which the FBI was actually expanding an inquiry involving Al Qaeda–related terrorists, and it was supplanted by broader guidelines—readopted, with modifications, by Ashcroft's department in August 2001.)

Ashcroft tossed out budget numbers designed to make it seem as if he were beefing up counterterrorism. (He did not discuss his opposition to Pickard's request.) He also claimed he had reviewed covert action orders left over from the Clinton Administration and that they did not, as former Clinton officials have said, authorize the assassination of Osama bin Laden. (Commissioner Fred Fielding, a Republican, noted that the commission had received documents showing Ashcroft to be in error.) And Ashcroft's aides handed out a flier claiming his department had "removed" from the United States "over 515 individuals linked to the September 11th investigation." (This was apparently a reference to immigrants detained and then deported after 9/11—none of whom were linked to the 9/11 attacks.)

It was an impressive appearance—if honesty doesn't count. The commissioners generally tossed Ashcroft easy questions, as happened when former FBI director Louis Freeh and CIA chief George Tenet testified. In front of the TV cameras, the 9/11 Commission comes across as lackluster: Its members don't bother to ask about the most obvious pre-attack screw-ups and oversights. Yet its interim reports are damning. One covering the FBI—which enumerates a host of problems—would make any taxpayer scream. Another reports the CIA mismanaged its counterterrorism mission before 9/11. A third details how the CIA repeatedly failed to inform the FBI about two suspected Al Qaeda terrorists who had entered the United States in January 2000. Both men, it turned out, were thereafter in contact with an FBI informant, and both became 9/11 hijackers. Once the CIA shared this lead with the FBI in late August 2001, the search for the suspects was handled by a single FBI agent—his first counterterrorism case. He was still conducting his search on September 11. It is heartbreaking reading.

In public sessions, the 9/11 commissioners have mostly been gentle, allowing past and present officials to make excuses and avoid responsibility for misjudgments and mistakes. But the commission's investigative work is hardly forgiving. Citizens who want accountability and answers ought to hope the final report—due this summer—is at least as penetrating as the interim reports and receives as much attention as the hearings. DAVID CORN

The UN Oil 'Scandal'

The same political figures who engineered the current debacle in Iraq are now trying to blame the United Nations for more than $10.1 billion worth of oil revenue they claim Saddam Hussein diverted from the Oil for Food program. The issue prompted a hearing in the Senate Foreign Relations Committee on April 7, where the ghost of Jesse Helms has barely been exorcised, and will be raised in two House committees. One of those calling for a House hearing is Henry Hyde, chair of the International Relations Committee, who has said publicly that he wants the United States to leave the UN. Those raising the Oil for Food issue have also implied that UN Secretary General Kofi Annan was somehow involved because his son once worked for a firm that won a contract from the program—even though he'd left by the time it took effect.

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COMMENT

But the accusers and their accusations bear more critical scrutiny. Much of the noise comes from the "Pentagon intellectuals," their protégé and informant Ahmad Chalabi and the *Wall Street Journal*'s editorialists, whose collective accusations are about as reliable as previous assurances that there were indeed weapons of mass destruction and that the UN was willfully not finding them. From *National Review* to the *Wall Street Journal*, the usual suspects have been banging away at the expedient scandal.

The Oil for Food program began as a way to maintain sanctions in the face of the suffering in Iraq that was eroding support for UN sanctions domestically and internationally. The Iraqis sold oil on the world market—often, ironically, to American companies, especially in the run-up to the invasion, to meet the fuel shortages caused by the threat of war. The proceeds of those sales went into an escrow account run by the Oil for Food program, from which the Iraqi government could draw to pay for bona fide humanitarian imports, after inspectors had verified their arrival in Iraq. By the time of the invasion, the program's food rations were the lifeline in whole or in part for more than 80 percent of Iraq's people.

Of the billions allegedly siphoned off, $5.7 billion was from smuggling oil through neighboring countries, such as US allies Jordan and Turkey. While this clearly broke sanctions, the United States never pressed those countries to stop it, although it did get annoyed when Syria belatedly made up its differences with Iraq and joined in the trade. The other $4.4 billion was the result of kickbacks from imports and surcharges on oil contracts. The Security Council, on which the United States has a veto, had allowed the Iraqis to negotiate their own contracts, and independent experts scrutinized them for signs of surcharging—but the Iraqis sophisticatedly kept the percentages within market ranges. A Security Council committee on which US diplomats played a prominent role scrutinized each contract, but its members never noticed the skimming until the Oil for Food office eventually alerted them to the problem. The committee tried to stop the kickbacks, but although UN officials also drew attention to overcharging on imports, not once did the US delegation put a hold on them.

At the core of the accusations is a list found in Baghdad of people who allegedly received "oil vouchers" from Saddam's Baathist regime, which allowed them to collect the kickbacks that companies had agreed to pay Baghdad outside the UN contracts. It includes a "Mr. Sevan," who the accusers happily suggest may be Benon Sevan, the longtime director of the Oil for Food program. He has denied the charge.

The neocons' accusations of corruption invariably end with a falsely regretful conclusion that their "evidence" of mismanagement and corruption proves that the UN is not fit for the role in Iraq that most Iraqis want it to have, and indeed an increasingly desperate White House seems prepared to accept. In reality, they cannot countenance UN interference in their spoils of war in Iraq—and some also suspect that they may be trying to head off any attempt to draft Annan for a third term, punishing him for his temerity in not supporting the United States.

Where the UN is at fault is in underestimating the malice of its enemies. Kofi Annan, despite internal opposition from countries that may have had things to hide, should have set up an inquiry sooner, and the UN should perhaps have relaxed its inhibitions and struck back with some questions of its own to put the affair in perspective.

For example, it could usefully ask: What has the coalition done with the $7.6 billion in surpluses that the Oil for Food program was forced to hand over to the coalition's development fund for Iraq? In March the recently constituted independent monitoring board, which has fought hard for independent audits, asked why the fund had paid Halliburton for uncontested contracts. Why didn't the Administration release the names of US companies involved in the kickbacks? It admitted to the Senate that they are known—but withheld. The cynical may suspect a Texas oil–Bush connection. It could also ask how much longer, now that Saddam has gone, some of the oil revenue will be diverted from desperately poor Iraq to much richer countries, mostly to Kuwait. Until now, the Oil for Food program has paid more than $18 billion of Iraqi oil revenues for the largest reparations since Versailles. At current rates, 5 percent of Iraqi oil money will be diverted indefinitely to pay the balance of $30 billion in accepted claims. Kuwait has refused to discuss dropping its demands. Now *that* is worth a Foreign Relations Committee hearing. IAN WILLIAMS

Ian Williams, The Nation*'s UN correspondent, is the author of* Deserter: George Bush, Soldier of Fortune, *due out in August from Nation Books.*

Guantánamo, Revisited

When the Supreme Court hears oral argument April 20 on the cases challenging the legality of the detentions at Guantánamo Bay, Cuba, it will confront the most dramatic conflict between liberty and security it has considered since World War II. The Bush Administration claims that the "war on terrorism" requires that it have unchecked power to detain "enemy combatants"—however the President defines the "war" and its "combatants." Lawyers who have challenged the Administration's position, without even getting to consult with the detainees they represent, maintain that if the rule of law means anything, the President cannot lock up human beings indefinitely and deprive them of access to any court.

The fact that the Court agreed to consider the Guantánamo detainees' claims—at a time when all the lower federal courts had ruled that the doors to the courts were closed—offers some basis for hope. But the Court's record on matters of national security and noncitizens' rights is not encouraging. The best hope for a rights-affirming ruling may rest on the Court's jealousy of its own power rather than on any concern for those who have languished at Guantánamo for more than two years.

The Bush Administration's position could not be more sweeping. It claims it can warehouse indefinitely at Guantánamo any person the President labels an "enemy combatant," or as George W. Bush puts it, "a bad guy." And it asserts that no court can play any role in reviewing its actions, because as foreign nationals the Guantánamo detainees have no rights enforceable in US courts. Under this view, if the military decided tomorrow to summarily execute all 650 or so men currently held captive, there's nothing any lawyer or court in the world could do about it.

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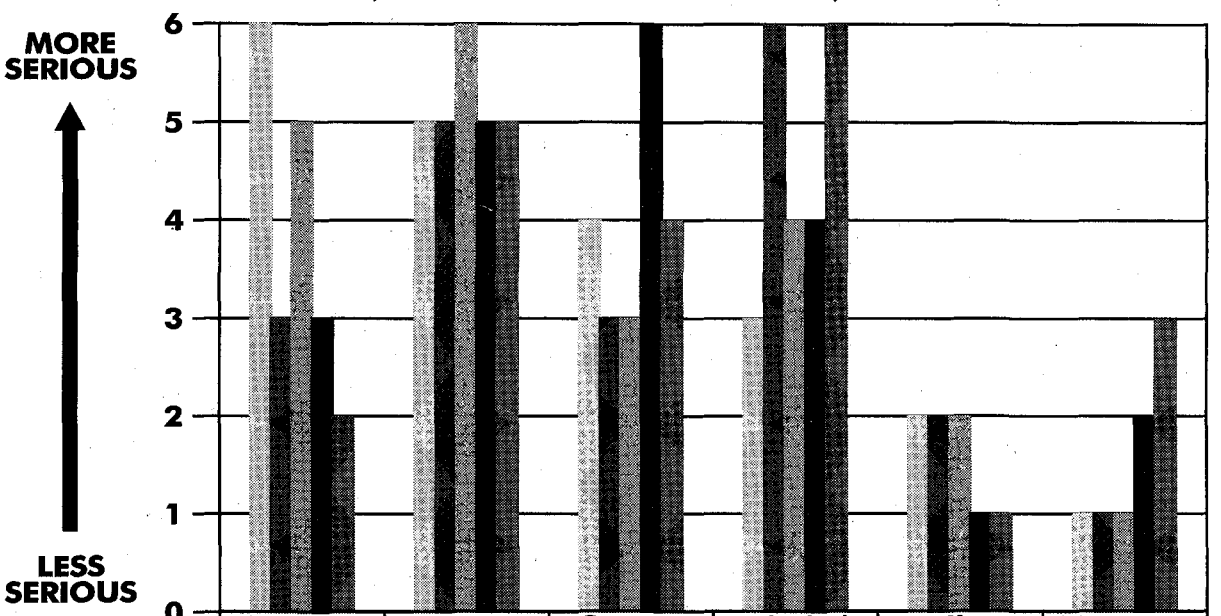
Do Our Drug Laws Focus on the Truly Dangerous Drugs?

Comparing Dangers of Popular Drugs

(Lower score indicates less serious effect)



	Nicotine	Heroin	Cocaine	Alcohol	Caffeine	Marijuana
DEPENDENCE	6	5	4	3	2	1
WITHDRAWAL	4	5	3	6	2	1
TOLERANCE	5	6	3	4	2	1
REINFORCEMENT	3	5	6	4	1	2
INTOXICATION	2	5	4	6	1	3

Source: Dr. Jack E. Henningfield, Ph.D. for NIDA. Reported by: Philip J. Hilts, *New York Times*, Aug. 2, 1994
"Is Nicotine Addictive? It Depends on Whose Criteria You Use."

Does Jailing Marijuana Users Make More Sense than Jailing Coffee Drinkers?

www.CommonSenseDrugPolicy.org, www.DrugWarFacts.org, www.MedicalMJ.org

Mike Gray, Chair; Robert Field, Co-Chair; Kevin Zeese, President – 717-288-0600 – info@csdp.org

Dependence: How difficult it is for the the user to quit, the relapse rate, the percentage of people who eventually become dependent, the rating users give their own need for the substance and the degree to which the substance will be used in the face of evidence that it causes harm.
Withdrawal: Presence and severity of characteristic withdrawal symptoms.
Tolerance: How much of the substance is needed to satisfy increasing cravings for it, and the level of stable need that is eventually reached.
Reinforcement: A measure of the substance's ability, in human and animal test, to get users to take it again and again, and in preference to other substances.
Intoxication: Though not usually counted as a measure of addiction in itself, the level of intoxication is associated with addiction and increases the personal and social damage a substance may do.

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COMMENT

It would be hard to imagine a more extreme assertion of unchecked, arbitrary power. Yet if the Supreme Court is to stand up to the Administration, it will have to depart from its own traditions. First, it has consistently deferred to the executive in times of crisis. It upheld the jailing of antiwar dissidents during World War I and of more than 110,000 Japanese-Americans during World War II. It whitewashed the military trial and execution of German saboteurs during World War II, prematurely announcing that it saw no problem with the trials and only issuing its decision *after* the executions had been carried out.

Second, the Court has repeatedly stated that foreign nationals outside our borders have no constitutional rights. In two of its most ignominious decisions, the Court in the 1950s held that due process imposed no limit on the government's detention—on secret evidence—of a German woman and a Hungarian man locked up on Ellis Island for years, because they were foreign nationals who had not entered the United States.

If anything leads this Court, staunchly conservative and pro-government in the best of circumstances, to rule against the Administration, it will be the Court's sense of its own power. The Administration's position writes the Court (not to mention Congress) out of the system of checks and balances. It claims that even when it is locking up human beings without a shred of due process, the courts have nothing to say in the matter. But this Court has jealously guarded its power—whether in deciding presidential elections or invalidating acts of Congress. Rarely has the Court been so incensed as when Congress argued, seven years ago, that by enacting the Religious Freedom Restoration Act, it could enforce a more expansive understanding of the free-exercise clause than the Court itself. The Court struck it down in no uncertain terms. More recently the Court even upheld *Miranda v. Arizona*, a decision a majority of today's Court would never have written in the first place, when it saw the issue as Congress seeking to question the Court's power.

In the end, if the Court rules against the Administration, it may be more to protect itself than to protect those in limbo at Guantánamo Bay. But in this instance, I'd take it, because nowhere is it more important for the courts to insist on their authority than in reviewing the power to lock up human beings. DAVID COLE

David Cole, Nation *legal affairs correspondent, is the author of* Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism *(New Press).*

The GOP Hunts Its Own

ELECTION MATTERS

When George W. Bush asked Congress for the authority to attack Iraq, New York Congressman Amo Houghton voted no. He voted against several of Bush's tax cut schemes, too, and against the Administration's proposal to drill for oil in the Alaska National Wildlife Refuge. Houghton has long argued that the United States must make a greater commitment to work with the United Nations and has been an enthusiastic supporter of the International Criminal Court and other multilateral initiatives. He supports abortion rights, gay rights, consumer protections and expansion of federal funding for the arts. He gripes about House majority leader Tom DeLay "jamming" his agenda down the throats of members.

What makes Houghton remarkable is that he is a Republican. But he will not be remarkable for long. One of the last of the dying breed of moderate—some would even say "liberal"—Republicans in Congress, Houghton won't be seeking re-election this fall. After almost two decades of battling to prevent the party of Lincoln from becoming the party of DeLay, and facing the prospect of a Republican primary challenge from a conservative local official in his district, Houghton decided to call it quits. He may not be the only Republican moderate to disappear at the end of this term. Other members of what could be the most endangered species in American politics are also being hunted down by fellow Republicans as the party's more frenzied conservatives pursue the ideological cleansing of Congress with primary challenges to New York's Sherwood Boehlert, Maryland's Wayne Gilchrest and other members of the House and Senate who refuse to read verbatim from the right's playbook.

The top target this year is Pennsylvania Senator Arlen Specter, the former Warren Commission lawyer who has managed to offend both the right and left during four terms in the Senate. Specter has never been a favorite of liberals—many of whom refuse to forgive or forget his inappropriately brutal questioning of Anita Hill during the Clarence Thomas confirmation hearings. But in a closely divided Senate, Specter's tendency to side with liberals on social issues, as well as his willingness to challenge the worst excesses of the right on judicial nominations, tax cuts, the minimum wage, school choice and tort reform, has made him a Republican that Democrats can deal with.

That's why the radical right is pulling out all the stops to get rid of Specter, who faces an April 27 primary challenge from conservative Congressman Pat Toomey. With big-money "independent" spending on his behalf from the Club for Growth, a billionaire boys' club that specializes in aiding primary challenges to Republicans who are insufficiently rabid, and even more essential support from the National Right to Life Committee, as well as cover stories in *National Review* declaring the challenge to be one of "the right fights" and cheerleading columns on the *Wall Street Journal*'s editorial page, Toomey has pulled close to Specter in some polls. If they can take out a veteran senator, Club for Growth boss Stephen Moore predicts a "political earthquake" that will force Republicans from the White House on down to avoid even the slightest deviation from the right's agenda. Some Democrats are cheering on the Toomey challenge, on the theory that a right-wing Republican should be easier for the Democratic candidate, Congressman Joe Hoeffel, to beat in November; but a Toomey-like right-winger, Rick Santorum, won Pennsylvania Senate contests in 1994 and 2000. In the realpolitik of the current Congress, the Pennsylvania AFL-CIO and key unions are pulling for Specter, as are many pro-choice and gay rights activists.

Arlen Specter is no progressive. In fact, he's not even an Amo Houghton. But if Republicans maintain control of the Senate after November, Specter and a handful of other renegade GOPers, ranging from Rhode Island's very nearly liberal Lincoln Chafee to conservatives with maverick streaks like Arizona's John

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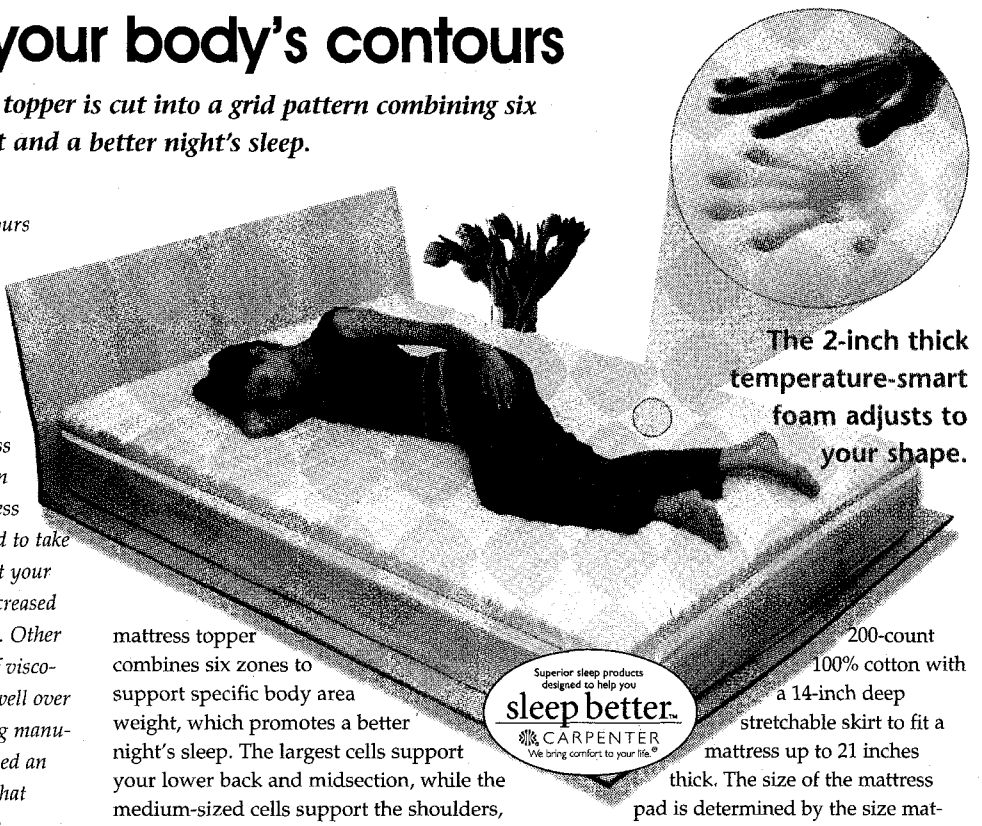

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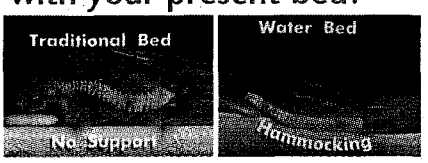

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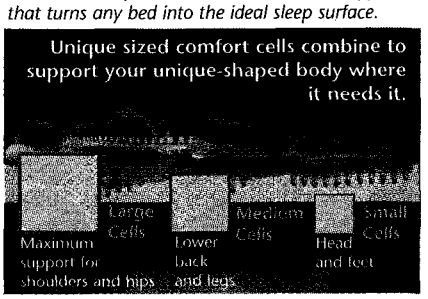
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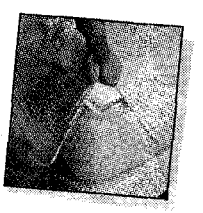

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McCain and Ohio's George Voinovich, could be the only roadblocks to right-wing hegemony. While it may be difficult for reasonable Americans to imagine the Republican Party pushed further right, just remember that some of the people going after Specter and other moderates this year grumbled that George Bush went "soft" when he suggested that conservatives might want to show some compassion. JOHN NICHOLS

Educating Senator Frist

George W. Bush has declared that tort reform will be a major part of his forthcoming campaign. In the Senate, majority leader Bill Frist has said he will make it a "personal priority" in the present session of Congress to deal with what he calls "the current asbestos litigation crisis." Frist intends to do this by persuading his colleagues to enact Orrin Hatch's Fairness in Asbestos Injury Resolution Act, known as the FAIR Act to its advocates, and as the Frist/Hatch asbestos bailout bill to its detractors.

In a speech before the Senate in November, Frist described the Johns-Manville Corporation and W.R. Grace & Company as "reputable companies" that had been driven into bankruptcy because of asbestos litigation. What he apparently did not know was that Johns-Manville had not only been aware since the early 1930s that incurable asbestos lung disease was disabling and killing its own workers but also had instituted a corporate policy not to inform sick workers about X-ray findings showing that they had developed asbestos disease.

In an infamous memorandum, the medical director of Johns-Manville described his company's policy toward unimpaired workers with X-ray evidence of lung damage as follows: "The fibrosis of this disease is irreversible and permanent so that eventually compensation will be paid to each of these men. But as long as the man is not disabled it is felt that he should not be told of his condition so that he can live and work in peace and the Company can benefit by his many years of experience." Is it any wonder that when presented with such evidence from internal company documents, jurors in what Senator Frist calls "the flawed tort system" began meting out punitive damages against Johns-Manville for outrageous and reckless misconduct?

As for W.R. Grace, which also had to pay punitive damages in asbestos litigation, Frist apparently did not think it important to inform his fellow senators in his speech that the asbestos-contaminated vermiculite mine and mill in Libby, Montana—many of whose residents, he acknowledges, have recently been diagnosed with asbestos disease—was owned by none other than W.R. Grace. Nor did he tell them that in 2001 Grace settled, for more than $2.75 million, a fine levied by a federal judge who found that the company had unlawfully denied the Environmental Protection Agency access to the Libby mine. Or that in 2003 the same judge ordered Grace to pay more than $54 million for emergency asbestos cleanup work performed by the EPA in Libby, and for medical screening of Libby residents and mine workers.

Equally puzzling is the manner in which Senator Frist, a physician, managed to mislead his fellow senators about the relationship between asbestos inhalation, cigarette smoking and the development of lung cancer. Twice in his speech, he warned against allowing the victims of lung cancer caused by smoking to make claims against the FAIR Act's compensation trust fund, on the ground that such claims might jeopardize the solvency of the fund. To support this position, he declared that fully 90 percent of the Manville Trust's lung cancer claimants had been demonstrated to be current or former smokers. (When Johns-Manville filed for bankruptcy in the 1980s, the Manville Trust was set up to pay compensation to thousands of workers who had developed asbestos disease after being exposed to the company's products.)

It is difficult to believe that a medical doctor could be so uninformed these days as to speak of lung cancer among asbestos workers who are current or former smokers as a disease undeserving of compensation. In any event, Senator Frist should now familiarize himself with the studies published in the peer-reviewed medical literature, which demonstrate the extraordinary synergy that exists between cigarette smoking, asbestos exposure and the development of lung cancer. These studies show that nonsmoking asbestos workers develop lung cancer five times more often than nonsmoking workers not exposed to asbestos, that cigarette-smoking workers not exposed to asbestos develop lung cancer ten times as often as nonsmoking workers not exposed to asbestos, and that workers who both smoke and are exposed to asbestos develop lung cancer fifty to sixty times as readily as workers who neither smoke nor are exposed to asbestos.

All of which should serve as a warning to Frist's Senate colleagues on both sides of the aisle that they should do their own homework on the nature of asbestos disease and not be swayed by shrill criticism of the tort system. After all, it is this system that exposed the misdeeds of the asbestos manufacturers to begin with, and provided the only true measure of justice and compensation for tens of thousands of sick asbestos workers and the families of dead asbestos workers, who had been betrayed for decades by their "reputable" employers. PAUL BRODEUR

Paul Brodeur, a staff writer at The New Yorker *for many years, is the author of four books on the asbestos hazard.*

GUGGENHEIM FOR GRACE: Grace Schulman, *Nation* poetry editor for the past thirty-two years, won a Guggenheim Fellowship to support work on a new book of poems. Her recent books are *The Paintings of Our Lives* and *Days of Wonder: New and Selected Poems,* both from Houghton Mifflin. An English professor at Baruch College, Schulman is not only a poet but a friend to poets: In 1974 she founded Discovery/*The Nation*, an annual contest for poets hitherto unpublished in book form, sponsored by *The Nation* and the Poetry Center at Manhattan's 92nd Street Y.

* * *

ON THE WEB: Read 1954 *Nation* coverage of the *Brown v. Board of Education* decision. Raffi Khatchadourian writes about Uzbekistan, Edward Batchelder writes from Cyprus and Jen Lin-Liu writes from China. At www.thenation.com.

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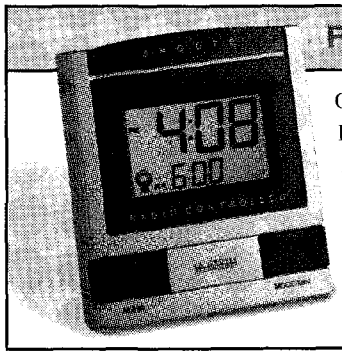

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ALEXANDER COCKBURN

The Two Parties of Empire

As one who regards Gerry Ford as our greatest President (least time served, least damage done, husband of Betty, plus Stevens as his contribution to the Supreme Court), I'd always imagined the man from Grand Rapids would never be surpassed in sheer slowness of thought. When a reporter asked Ford a question it was like watching that great sequence in Rossellini's film about Louis XIV, when a shouted command is relayed at a stately pace through a dozen intermediaries from the kitchen to the royal ear. In Ford's case, to watch a message negotiate the neural path from ear to cortex was to see a hippo wade through glue.

But I think Bush has Ford beat. Had he ever made a mistake, the reporter asked at that White House press conference. The President's face remained composed, masking the turmoil and terror raging within, as his cerebrum went into gridlock. It should have been easy for him. Broad avenues of homely humility beckoned. "John, no man can stand before his Creator as I do each day and say he is without error..." Reagan would have hit the ball out of the park. But the President froze. He said he'd have to think it over.

Behind all the liberal hysteria over Bush as a demon of monstrous, Hitlerian proportions, I get the sense of a certain embarrassment, that the man is bringing the imperial office into disrepute. Hence we are served up those plaintive invocations of the distress of "America's allies," to be cured by a competent steward of empire like John Kerry. But should not all opponents of the American Empire's global reach rejoice that Bush has sown confusion in the alliance? Would not the world be a safer and conceivably a better place if the allies saw separate paths as the sounder option? Gabriel Kolko, that great historian of American Empire, has been arguing powerfully (most recently in our *CounterPunch* newsletter) to this effect, and I agree with him.

With leadership of barely conceivable arrogance and incompetence (Paul Bremer alone is a case study in the decline in quality of American leadership in the past fifty years), the United States has managed the amazing feat of uniting Iraqis in detestation of its presence, and of leaving itself with zero palatable options. Amid this bloody disaster, with popular distaste for the occupation of Iraq swelling up in the polls, Kerry, with McCain at his elbow, has been goading Bush into sending more troops. As a prospective rationalizer of empire, Kerry sends forth the word that the Democrats are the Second Party of War.

With hardly a backward—or forward—look, the bulk of the surviving American left has blithely joined the Democratic Party center, without the will to inflect debate, the influence to inform policy or the leverage to share power. The capitulation of the left—a necessarily catchall word—is almost without precedent. By accepting the premises and practices of party unity, the left has negated the reasons for its own existence.

Let me produce a rabbit from its hat. I wrote that last paragraph, the one beginning "with hardly a backward look," with Andrew Kopkind in a piece we did for *The Nation* in the summer of 1984, about Walter Mondale's candidacy, where we noted the party's commitment to "the essential elements of Reaganism: continued military expansion...further degradation of the welfare system, denial of black demands for equity and unqualified submission to the imperatives of the corporate system." Any words you think should be changed?

In line with these same imperatives of the corporate system, Kerry announced on April 7 that his primary economic policy initiative would be deficit reduction. Welcome back, Robert Rubin, the man who ran Clinton's economic policy on behalf of Wall Street. Kerry's economic advisers, Roger Altman and Gene Sperling, acknowledge that they consult with Rubin all the time. If you still foolishly believe that the economy in Clinton time was properly guided for the long-term benefit of the many, as opposed to short-term bonanzas for the wealthy few, I strongly urge you to read Robert Pollin's *Contours of Descent*, which I hailed here last November.

Deficit reduction will do nothing to directly promote the growth of jobs, which is the fundamental problem in the economy now. As Pollin just remarked to me, "It is also a political disaster for the Democrats to again latch on to deficit reduction rather than jobs as their major economic theme. Even if Rubin were right about deficit reduction stimulating growth of GDP, what is clear in the current 'recovery' is that GDP growth alone does not promote job growth. That's exactly what we mean by the 'jobless recovery.' The Democrats should instead be talking about a major jobs program, through refinancing of state and local government spending in education, health and social welfare."

Kerry's other shoe, war on the deficit as well as war in Iraq, has a more sinister import. Deficits aren't intrinsically bad, and the current one is scarcely unparalleled in recent US economic history. But Bush's deficits, amassed in the cause of tax breaks for the very rich and war abroad, provide the premise of a fiscal crisis to starve social spending. It's the Greenspan Two-Step: Endorse the tax cuts, then say, as the Fed chairman did in February, that the consequent deficits require the evisceration of Social Security. Remember, Bill Clinton was all set to start privatizing Social Security, until the allurements of the divine Monica postponed the onslaught.

There are progressive ways to close the deficit. For example, Pollin reckons that if we imposed a very small tax on all financial transactions—i.e., all stock, bond and derivative trades, starting with a 0.5 percent tax on stocks and scaling the others appropriately—we could raise roughly $100 billion right there, or roughly 20 percent of next year's projected deficit, even if we also assume financial market trading fell by an implausibly large 50 percent as a result of the tax.

A tax on financial transactions? Now you're talking, but not about anything you might expect from the Democratic Party or John Kerry. ■

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PATRICIA J. WILLIAMS

Unimagined Communities

DIARY OF A MAD LAW PROFESSOR

This year is the tenth anniversary of the end of apartheid in South Africa, the fortieth anniversary of the Civil Rights Act of 1964 and the fiftieth anniversary of the Supreme Court's ruling in *Brown v. Board of Education*. This confluence was impressed upon me yesterday when I received an invitation to a conference hosted jointly by the University of Mississippi and the University of South Africa, on "South African Democracy and US Civil Rights." The abstract made for intriguing reading: "South Africa's constitutional democracy is premised, inter alia, on the right of individuals and communities to re-invent their identities, to imagine new social worlds, and to participate in the public contestation of alternative political imaginations. This is in stark contrast to the apartheid state, where social identities were legally imposed, where individuals were not allowed to transcend the strictures of rigid classifications, and where the space for political action was severely constricted."

As I was reading this, a broadcast of various officials' testimony before the 9/11 Commission was playing on the radio. As background noise, it made for odd listening. All those agencies, bureaus, offices and teams clearly had information, knowledge, intelligence. What seemed to be missing was any ability to interpret what they had. Surely this kind of work is not easy—no one expects governments to be able to anticipate or control all the horrors of the world—but the more witnesses revealed to the commission, the more it seemed clear that the inability to interpret what data they did have resulted less from lack of facts than from a failure of analysis, lack of translators, innumerable petty rivalries and internal administrative bumbling of shocking proportions.

Yet media summaries of the commission's inquiry seemed to drift away from questions of effective coordination and move toward granting greater "war" powers to law enforcement. Repeatedly, there were references analogizing the war on terror to the war on drugs—which has not been particularly distinguished either by its regard for human rights or by anything like success. Media commentators from various think tanks hypothesized confidently on TV and radio: If only the government didn't have to apologize for compiling lists of people based on membership in suspect political organizations (concurrently, it was reported that the government has compiled a no-fly list that includes pacifists and attorneys for the ACLU, not just Al Qaeda). If only they didn't have to worry about discriminating against ethnic or religious groups when deciding when to stop and search. If only, if only they were able to follow their every last hunch.

Anticipating criminality and deciphering intent will always be the most difficult and uncertain of endeavors. But haphazard, wide-net suspicion is no substitute for less intrusive, more practical safeguards. The hijackers didn't necessarily "look" suspicious when they showed up at the airport on September 11; it would be terrible if their example were used to legitimize new rounds of ethnic or racial profiling. Such overbreadth ignores the better and simpler evidence against the hijackers: Regardless of arrest records or flying schools, they were carrying four-inch knives and no one caught it. Moreover, they could not have done what they did if the cockpit doors had been reinforced and locked, as Israel's El Al Airlines has done for years. El Al also makes its baggage compartments shock-proof to lessen the possibility of an explosive package bringing a plane down.

We Americans have always prided ourselves on being a mobile society. We roam, we are restless, we move. Our homes are temporary, we change our names, we go from rags to riches. We own ourselves, we renovate, we change. This plasticity of identity is central to how we practice our freedom. Liberated people around the world have followed our example, from South Africa to Tiananmen Square. In contrast, the great price of living in a constantly policed state is that you can never move without being followed; that you can try to change your name but they always have your number; that your fate is tied to the assumed propensities of your profile.

The commission hearings continued through the day. John Ashcroft, the highest lawyer in the land, was complaining that FBI agents don't have enough freedom but are "given instead the language of lawyers." He was decrying "the barrier" between domestic policing and global intelligence-gathering. He was denouncing the "snarl" of legal regulations before which FBI and CIA agents supposedly dither for fear of "breaching the wall" between them and the pursuit of "decisive lethal action."

Perhaps it was hard to decipher, but his testimony was a defense not only of pre-emptive assassination but also of the USA Patriot Act's apparent license for domestic spying—in effect, giving the FBI and CIA power to profile citizens based on heretofore private information, to conduct warrantless searches of homes and computers and to sabotage political activity they deem undesirable, without review. In other words, the power to act as secret police. There was no mention of the Fourth Amendment or the Bill of Rights in Ashcroft's testimony. There was no mention of the FBI's disgraceful history, of its discrediting of Martin Luther King Jr. or its sabotage of scores of legitimate civil rights organizations; no reference to its mishandling of everything J. Edgar Hoover ever touched, or the botched investigations of Timothy McVeigh and James "Whitey" Bulger.

A police state is not the same as a neighborhood watch. Police make mistakes, and when they are licensed to act ungoverned by due process, they are unaccountable to the public for their "decisive lethal action." That is a recipe for corruption or, at the very least, horrific mistakes. Without legal recourse citizens fear politics. And when they cannot reinvent themselves through political expression, they cannot "transcend the strictures of rigid classifications."

The same day as Ashcroft's testimony, President Bush gave a press conference in which he promised the Iraqi people "a bill of rights that is unprecedented in the Arab world." It would be a tragic irony if ten, forty, fifty years from now, we were to look back on this as a time when we traded in our own. ■

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BROWN AT 50

ERIC FONER
AND
RANDALL KENNEDY

Prior to the landmark Supreme Court rulings in *Brown v. Board of Education* and *Bolling v. Sharpe*, the US government and the states were permitted to segregate students racially in primary and secondary public schools. The official rationale for this arrangement was that students—black as well as white—would all fare better in their own, racially distinct schools. Schooling would be separate…but equal, and thus fair. The "separate but equal" formula was coined in Massachusetts in 1850 but elevated to national influence in 1896 when, in *Plessy v. Ferguson*, the Supreme Court affirmed the constitutionality of a Louisiana statute that required racial segregation on trains.

Dissenting in *Plessy*, Justice John Marshall Harlan stated forthrightly what everyone actually knew: that racial segregation arose not from any mutual, reciprocal, respectful desire for social distance and group autonomy but rather as an expression of white supremacist subordination of people of color. Noting that segregation proceeds "on the ground that colored citizens are so inferior and degraded" that they cannot be allowed to share public space with whites, Harlan predicted that segregation would "stimulate aggressions…upon the admitted rights of colored citizens," "arouse race hate" and "perpetuate a feeling of distrust between [the] races."

The half-century after *Plessy* confirmed Harlan's dire prophecies. White supremacists bent on undoing the gains achieved during the Reconstruction Era disenfranchised blacks, severely limited their economic and educational opportunities, terrorized them through mob violence and systematically stigmatized them by extending segregationist laws and customs to practically every sphere of social life, from hospitals to prisons, beaches, restaurants, bathrooms and schools. In some courtrooms, witnesses of different races were required to take oaths on separate Bibles.

On May 17, 1954, the Supreme Court in *Brown* invalidated state laws requiring or permitting racial segregation in public primary and secondary schools. Such laws, the Court concluded, violate the equal protection clause of the Fourteenth Amendment. Simultaneously, in *Bolling* the Court held that the due process clause of the Fifth Amendment prohibited the federal government from racially segregating students in the District of Columbia. "In the field of public education," the Court declared, "the doctrine of 'separate but equal' has no place."

These decisions marked a major step forward in the struggle for racial justice—one that surely warrants commemorating on its fiftieth anniversary. The rulings reflected and encouraged developments that would soon spark that burst of humane, bold and heroic action we now know as the civil rights movement. *Brown* and *Bolling* stemmed from an extraordinary campaign of social reform litigation mainly led by black attorneys who had themselves suffered cruel deprivations imposed by segregation. These decisions demonstrated that at least some sectors of the white establishment were willing to begin cautiously to challenge open, unembarrassed, official discriminations against blacks and other peoples of color.

Although *Brown* and *Bolling* are often lauded as "eloquent" opinions, they were in fact remarkably modest in their rhetoric, their scope and their remedial approach. Seeking to create a unanimous decision in the face of ambivalence and resistance from some of his colleagues, Chief Justice Earl Warren intentionally penned opaque and non-accusatory opinions keenly attentive to the sensibilities of segregationists. As a result, the language of the opinions had "all of the moral grandeur

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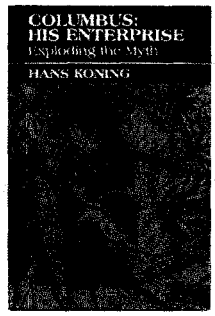

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of a bill of lading," as the historian Richard Hofstadter once said of another enormously consequential declaration, the Emancipation Proclamation. One looks in vain in *Brown* and *Bolling* for the candid and vivid articulation of segregation's purpose that one finds in Justice Harlan's dissent in *Plessy*. One looks in vain for a reckoning with segregation which explains that it was what Professor Charles Black termed a "child eating lie," one of many ways in which white supremacists armed with state power kept blacks in "their place." The sobering fact is that in 1954 the Supreme Court of the United States could not yet tell the truth about segregation.

Although *Brown* and *Bolling* are often celebrated as if they invalidated official segregation broadly, the opinions only expressly struck down de jure segregation in schooling. Only after a long, difficult campaign by civil rights activists did the Court extend its antisegregationist logic to other areas. For example, despite attempts soon after *Brown* to prod the Court to invalidate segregation at the marriage altar, it was not until 1967 that the Justices got around to striking down remaining state laws prohibiting matrimony across the race line.

Usually courts grant a remedy to prevailing petitioners. In *Brown* and *Bolling*, however, the Court rejected the plaintiffs' demands to be permitted immediately to attend schools on a nonracial basis. Instead, after yet another hearing on the matter, the Court deferred to "moderate" segregationists by making clear that it would refrain from insisting upon a quick transition to nonracial schooling. It would suffice, the Court declared, for desegregation to proceed "with all deliberate speed." A full decade after *Brown* and *Bolling*, a little more than 1 percent of black children in the former Confederate states attended schools that were at all desegregated.

The Supreme Court decisions of May 1954 did not mark the end of purposeful, state-mandated racial segregation in public schooling; they marked only the beginning of a new phase of struggle. The reformist Justices of the Supreme Court played an important role in that struggle. But it would be wrong to permit their handiwork to eclipse the achievements of activists such as Medgar Evers, Modjeska Simkins, Fannie Lou Hamer, Myles Horton, James Reeb, Robert Moses, Septima Clark, Ella Baker, James Farmer, Thurgood Marshall, Roy Wilkins and John Lewis—people who, assisted by *Brown* and subsequent rulings, attempted with considerable success to uproot segregation and its kindred abominations. *Brown*'s symbolic stature today would be much diminished were it not for the accomplishments of the civil rights movement—its leveling of racial barriers beyond the reach of litigation, its elevated image of the black American and its impressive legislative legacy, particularly the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

We invited a wide range of commentators to participate in this special issue of *The Nation*, and they offer varying, sometimes conflicting assessments of *Brown*, its companion cases and its legacy. Judge Robert L. Carter revisits his ideas and motivations as one of the lead attorneys who argued the cases at trial and on appeal. Michael J. Klarman reconsiders the social milieu that surrounded the 1954 Supreme Court and evaluates *Brown*'s

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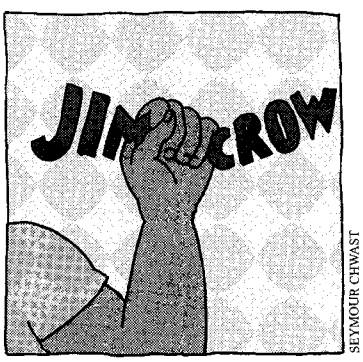
place in civil rights history. Jack Bass shows how a remarkable cadre of progressive judges in the lower federal courts (most of them Republican appointees) were critical to enforcing *Brown*'s mandate. Alan Richard returns to Clarendon County, South Carolina, to probe lingering tensions in a rural locale where school desegregation plaintiffs fifty years ago were brutally repressed. Michael Honey illuminates the ways in which desegregation struggles have intersected with efforts to advance the interests of urban black workers. Peter Schrag and Claude M. Steele each offer concrete strategies for improving the lot of disadvantaged minority students today. And the diverse participants in the forum that follows weigh the impact of *Brown* on an American society still afflicted by profound racial inequalities.

A recurrent message in this issue is that *Brown v. Board of Education* and its companion cases contributed in a major way to bettering America by delegitimizing racial segregation in public schooling. A second key theme, however, is that *Brown*'s promise remains, to a considerable extent, unfulfilled. Jim Crow schooling is not a wrong inflicted in ancient times on people long since dead; it is an all too recent injustice that created unhealed wounds. A century ago, W.E.B. Du Bois wrote the famous words, "The problem of the twentieth century is the problem of the color line." Despite all that has changed since *Brown*, his words remain a challenge for the twenty-first. ■

A FORUM

Beyond Black, White and *Brown*

Thanks to the civil rights revolution, de jure segregation is dead. But vast social, economic and educational inequalities continue to plague American society. Moreover, while the black-white paradigm has never fully described American race relations, we are far more aware today than in the past of the multiracial nature of our society. With this in mind, we asked a range of scholars, writers and activists to reflect on the legacy of Brown *and the prospects for future change. Should education be the primary focus of social activism? What strategies will most effectively promote educational betterment in black and other communities? Can we expect the courts to play a role at the forefront of change, as they did for much of the 1950s and '60s, and if not, what other institutions are positioned to adopt that role? Is the goal of educational desegregation irrelevant today? Their responses follow.* —*The Editors*



SEYMOUR CHWAST

★

Adolph Reed Jr.

It's almost difficult for me to take in that the *Brown* decision was handed down fifty years ago this May. It's so vivid a part of the swirl of dramatic events that punctuated and shaped my childhood: the Montgomery bus boycott, the lynching of Emmett Till, Little Rock—all of which occurred within three years of *Brown*.

The United States has changed radically during the half-century since that momentous ruling, and it's good to recall that it has. It's important especially to recognize how striking political and social change has been in the South. Those who can't remember the old Jim Crow regime can be too easily seduced by a rhetoric that stresses the magnitude and injustice of contemporary inequalities by minimizing the significance of the victory against segregation. Those who lived under the old regime know better.

The segregationist regime in the South encompassed far more than the "separate but equal" doctrine that *Brown* overturned in public education, far more than the petty apartheid reflected in WHITES ONLY or COLORED ONLY signs. It was a codified social order, a system of state-sponsored and state-enforced racial domination. It wasn't about prejudice and bigotry. Though it certainly fed on and legitimized both, it was fundamentally about who could claim the rights and protections of citizenship and who couldn't. And it was always at least as much about imposing and stabilizing a pattern of social relations rooted in the political economy's class and power dynamics as it was about formal commitment to an ideology of white supremacy.

It was also finite. It was the expression of reactionary elites' victory in the nearly thirty-year struggle over the terms on which a post-slavery Southern social order would be built. The Jim Crow regime sanctified in the infamous *Plessy* doctrine was only fully consolidated between 1890 and 1910. Its institutional back was broken by 1965. That is, all four of my grandparents were at least adolescents by the time the system was solidly entrenched; its legal foundations were destroyed before I was old enough to vote.

In 1954, or even 1955 or '57, few imagined that the system wouldn't last another generation. Even activists weren't prepared for the prairie fire of insurgency that opposition to Jim Crow ignited between the mid-1950s and mid-1960s. *Brown* was both illustration of and impetus for that change. It was also a culmination of decades of careful strategizing and organizing, of protracted legal struggle, against one facet of the segregationist order—a point where its separate-but-equal sophistry was most vulnerable—led by the NAACP and its allies.

Scholars and ideologues of one sort or another continue to debate the precise role that *Brown* played, how important it was, in bringing down Jim Crow. These debates can be more or less useful or interesting analytically. They can help to sharpen perspective on different facets and nuances of the movement and its time. But they are ultimately irresolvable. All we can say is that *Brown* was a current in a stream of activism that swelled into an

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irrepressible torrent of opposition over the ensuing decade.

This is where the greatest lessons of *Brown* lie for our time. First, actions by and pressure on government can help change fundamental social relations and the nature of the terrain for political action. Second, political movements ferment slowly and grow in relation to their efforts to change actual policies. Third—and perhaps most important to keep in mind for a younger generation that has known only Reaganism or the Democrats' "Me Too, But Not So Much" response—moments of sharp social change can condense abruptly, when least expected.

Adolph Reed Jr. is professor of political science at New School University.

★

Pedro Noguera and Robert Cohen

Although the US Supreme Court called for school integration to proceed with "all deliberate speed" in the wake of its *Brown* decision a half-century ago, progress toward integration has been depressingly slow.

By the tenth anniversary of *Brown* only 1.17 percent of black schoolchildren in the eleven former Confederate states were attending integrated schools. With pressure from the civil rights movement, the federal government took on a more assertive role in promoting school busing, so that by the time of the twentieth anniversary, in 1974, real progress had been made and 46.3 percent of black students were attending integrated (white majority) schools. However, in the past twenty years this progress has come to a halt. White flight from the cities and several setbacks in the courts have together undermined the goals of *Brown*. Sadly, on *Brown*'s fiftieth anniversary the only deliberate speed we see is toward resegregation; today less than a third of African-American students attend racially integrated schools.

The de facto segregation of so many of our nation's schools is no longer an issue that generates conflict and controversy. Like the growing prison population and homelessness, racial segregation is accepted as a permanent feature of life in America. Across the country, schools are segregated in terms of race and class, and as was true before *Brown*, the vast majority of poor children are relegated to an inferior education.

For this reason, those who still regard the goals of *Brown* as important find themselves in a quandary. Given that white flight and legal barriers have made integration nearly impossible to achieve, the only way to revive the legacy of *Brown* may be to push for equity in the conditions under which children learn. Thus, efforts to pursue equalization in funding such as New York's Campaign for Fiscal Equity may be the only means available to insure that poor children are not permanently relegated to woefully inadequate schools. In effect, this means taking several steps back, to reclaim the unfulfilled promise of *Plessy v. Ferguson*: separate but equal. As problematic as this may be, it is the only course of action available to pursue justice in educational policy in areas where racial integration is no longer likely.

Outside of urban areas, there are still a number of school districts that have defied the trend toward resegregation and that remain relatively integrated. Most of these are located in inner-ring suburban communities, and many are in university towns. In some cases they are liberal communities that have viewed support of school integration as a matter of principle: proof of a commitment to tolerance, openness and racial justice.

Yet despite their support for "diversity," in almost all these communities the goals of *Brown* remain unfulfilled. In such communities minority students are more likely to be tracked into remedial courses or special education, to be suspended or expelled, or to be excluded from honors and gifted classrooms. Enrollment numbers give the impression that schools are integrated, but closer scrutiny reveals they are segregated within.

Education remains the best hope for the poor and the powerless, and one of the few means of reducing the profound disparities in wealth and opportunity that characterize American society. But we have a long way to go to fulfill the promise of *Brown*. The fiftieth anniversary of the decision should cause us to reflect on where we stand as a nation in our effort to undo the legacy of slavery, racial discrimination and injustice. It should also move us out of the complacency that has allowed the gains of the civil rights movement to be reversed.

Pedro Noguera is a professor in the Steinhardt School of Education at New York University. His most recent book is City Schools and the American Dream *(Teachers College). Robert Cohen is associate professor at the Steinhardt School. His most recent books are* The Free Speech Movement: Reflections on Berkeley in the 1960s *(University of California), co-edited with Reginald E. Zelnik, and* Dear Mrs. Roosevelt: Letters From Children of the Great Depression *(University of North Carolina).*

★

Mari Matsuda

New York Times columnist John Tierney chided candidate John Edwards for lamenting the little girl without a coat, who prays for warm weather. The anecdote misleads, he suggests, since coats "typically sell for about $5 in thrift shops." Funny, I have seen that coatless child. A DC public school teacher whispered a request to me: "Find a coat for her."

This is what urban teachers see: children who wolf down their free breakfast because it's their first meal since they left school yesterday; children with sores on their bodies, untreated because there is no health insurance; children with fevers sent to school because there is no backup childcare; and, yes, shivering children on winter days, coatless for any number of poverty's reasons—including the fact that the consignment stores with the $5 winter coats have relocated to the neighborhoods where the *New York Times* writers live. Can I get a witness?

No, because the urban intelligentsia have abandoned the public school system. A friend writes recently about his peer group's choices:

"Very few of us sent our kids to our neighborhood public elementary schools, especially if those schools have high percentages of poorer kids, immigrants and limited-English kids. Here's what most of our friends did: 1. sent their kids to private schools; 2. moved to a district that has good public schools; 3. using superior knowledge and connections, sent their kids to better alternative public schools and magnet schools.... The folks I'm talking about are public interest lawyers, NLG members, partners in

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minority law firms, founders and board and staff of community and public interest organizations, etc., and me."

This e-mail could have come from many of my closest friends, or, I suspect, from a large number of *Nation* readers. *Brown v. Board of Education* ended the formal segregation we were born into. We learned politics in the movement to make *Brown*'s promise our lived reality. We marched for civil rights, linked arms to stop eviction, sang "We Shall Not Be Moved" with tear-stained conviction and then walked quietly away from public schools. In the beginning it was called white flight, but the friend who writes to me is not white, and neither are the peers he is talking about. In my DC neighborhood, black parents as well as white choose against the local school.

Here is what you don't see if you are not inside that school: heroic teachers and real learning occurring alongside unconscionable neglect of human needs. Because I see many strengths still intact, my children remain in neighborhood schools. I deploy privilège from my back pocket to help make those schools work and, I confess, to retain the exit option if it comes to that. A plea to my peers: Before you pull out, make sure it is as bad as you are imagining it is, and do the impossible. Cleanse your imagination of racism.

Without witnesses, without the influence and entitlement that educated parents bring, it is hard to muster the political will to provide the simple things we need to fix our public schools: well-maintained buildings; a textbook for every child; well-trained and well-paid teachers; small classes; wrap-around social services; rich curriculum that includes the art, music and sports that we cut long ago; early intervention for the at-risk; and enrichment programs to retain the privileged and their much-needed social capital. It is no mystery. The privatizers have hoodwinked us into believing that public education, like poverty, is hopeless.

We, the richest, most powerful nation on the planet, could solve our social problems in a heartbeat. I don't have to tell *Nation* readers where the money went instead of to the schools, but I do want to tell you this: Enter your neighborhood school, if not as a parent, then as a tutor. Witness both the good and the abomination. If you see it, your outrage will remind you of what you know how to do. Make power concede to struggle for our children. All of our children.

Mari Matsuda is writing a book, with Charles Lawrence, on the abandonment of public education.

★

Frank H. Wu

The 1954 Supreme Court decision in *Brown v. Board of Education* is perhaps the most important judicial ruling in the history of our diverse democracy. It deserves to be more than merely symbolic, as admired as it is empty. Ever since the Justices ruled that the doctrine of racial segregation was constitutionally wrong, even if it were somehow hypothetically separate but equal (never mind that separate had never been equal), much of the nation has engaged in "massive resistance," even shutting down public schools rather than admit black students.

Ironically, passive indifference has succeeded where massive resistance failed. The orders of desegregation have not created an imperative for integration. To the contrary, the High Court has rendered judgments since *Brown* that insure its ineffectiveness. The Court has, for example, endorsed racial divisions if they coincide with city-suburb boundaries, and has accepted racial patterns that emerge from housing choices.

Even at the level of technical doctrine, it is not clear what *Brown* means—if it means anything substantive at all. The controlling precedent for the interpretation of the Fourteenth Amendment's guarantee of equal protection has become, instead of *Brown*, the cases allowing the internment of Japanese-Americans during World War II. It was not *Brown* but *Hirabayashi v. United States* and *Korematsu v. United States* that created the notion of "strict scrutiny" as it applies to racial classifications. Indeed, a law school graduate sitting for the bar exam could not be fairly tested on the implications of *Brown* but must be able to recite the factors involved in strict-scrutiny review.

This is bizarre. After all, *Brown* was a case everyone understood to be about race, arising from the ongoing subjugation of African-Americans, in which the Justices unanimously reached a result that virtually all now celebrate as right. In contrast, *Hirabayashi* and *Korematsu* were cases the majority denied were about race, addressing the situation of Japanese-Americans during the alleged exigencies of wartime, in which the Justices were divided but acquiesced in a government program virtually all now condemn as wrong.

We can confirm the demotion of *Brown* and the accompanying promotion of *Hirabayashi* and *Korematsu* by reading the Supreme Court's affirmative action opinions. In *Bakke*, *Adarand* and the recent University of Michigan litigation, the Justices have cited not *Brown* but *Hirabayashi* and *Korematsu*. They have insisted that efforts to remedy racial discrimination, like any bigotry of the Jim Crow era, must conform to strict-scrutiny review. When Justice Sandra Day O'Connor announced that diversity was a compelling state interest and the use of race as a factor was narrowly tailored, she was finding that affirmative action passed the strict-scrutiny test.

Supporters of affirmative action invoke the spirit of *Brown*; opponents of the programs complain that there is no comparison to be made. Yet if *Brown* is to stand for something, ought it not at least to stand for the proposition that, if we believe we must have institutions that are inclusive, we also should take action to insure that they are so?

Frank H. Wu, a professor of law at Howard University, is the author of Yellow: Race in America Beyond Black and White *(Basic).*

★

Asa Hilliard III

"Segregation," "desegregation," "integration" and "assimilation" are key words that have served as lenses through which racial inequity and oppression through schooling have been viewed and understood. This language is not a compatible fit with the real world of schools, teaching and learning, nor does it reflect an understanding of the full dimensions of the problem.

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Before *Brown*, Carter Woodson and W.E.B. Du Bois were among the few who grasped the robustness of the white supremacy social order, and its manifestation in the structure and function of the schools. Segregation was not merely the coerced separation of the "races" in schools. It was a total structure of domination, which included the uses of all major societal institutions—law, mass media, criminal justice, religion, science, school curriculum, spectator sports, art, music, etc.

These agencies provided the propaganda and legitimacy that resulted not only in coerced physical segregation but in a false school curriculum; the control over African schooling by segregationists; the defamation of African culture; the disruption of African institutions of family, ethnic group identity and solidarity; prevention of wealth accumulation; blocked access to communication; the teaching of white supremacy and African inferiority; and more. The *Brown* decision addressed mainly two things: physical segregation and financial inequalities in school funding. While *Brown* was a major challenge to the structure of racial domination by heroic advocates and activists, the decision fell far short of addressing the totality of the school problem, which continues to lie in the larger domination structure. "Integrating" the schools did not eliminate the ideology of white supremacy from which "segregation" derived.

In the absence of a real understanding of the structure of domination, some of the worst elements of segregation have returned, in new guises. Tracking is less visible, but it persists. Today's scripted, standardized, cookie-cutter, minimum-competency managed instruction, sometimes by private contractors, with severely reduced parent and community involvement, is offered mainly in low-income minority cultural group schools. Affluent public or private schools rarely if ever use the scripted, non-intellectual robotic programs. This is the new segregation.

We must ask not merely "Were the schools 'desegregated' or 'integrated?'" but "Has the achievement of African children improved significantly? Has the curriculum been desegregated? What explains the massive decline in the African teaching and leadership force in the schools?" Teachers and administrators receive little in the way of robust multicultural content and perspectives in their own training. The celebration of heroic individuals and their singular "contributions" during Black History Month cannot substitute for the evolving story of a people that is reflected in all curriculum areas. Patterns of African worldviews, cultural creativities, spirituality and value systems, political and economic challenges, etc., provide a context for individual actions that is missing in many schools.

Brown was mainly about black and white. Now a rainbow of other ethnic groups has arrived to share in the "savage inequalities" that persist. This presents major challenges, conceptual and structural, calling for a whole new resolve, and resources to provide truly equal opportunities to learn. Currently marginalized educators who have always achieved excellence, regardless of social class or ethnicity, ought to be leading our schools, systems and policy, not those newcomers to education who are "experimenting," often with ideas imported from the corporate world. Though Mexican, Hmong, Chaldean, Haitian and other immigrant children may not have experienced the pre-*Brown* or even the post-*Brown* apartheid, they do experience some of the residual effects of segregation structures, such as the white-supremacy ideologies that foster low expectations, low support commitment, alien and remote school leadership and detrimental school practices.

In the final analysis, our problems are not professional or pedagogical. The question is, Will we recognize and nurture the natural genius in all children, or will we tolerate the "savage inequalities" in services?

Asa Hilliard III, a teacher, psychologist and historian, is the Fuller E. Callaway Professor of Urban Education at Georgia State University. He is founder and vice president of the Association for the Study of Classical African Civilizations.

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Patricia Sullivan

Brown v. Board of Education stands as a high-water mark in the modern civil rights movement. It represents the triumph of an improvisational legal campaign that joined a hard-edged litigation strategy with a twenty-year-long organizing effort throughout the South. NAACP lawyers and activists recruited plaintiffs, cultivated local support and helped lay the groundwork for a protracted challenge to racial segregation. Schools and education were at the center of the campaign. Charles Houston, the architect of this effort, warned that blacks would be subject to even greater oppression unless they continually fought for "identical quality and quantity of educational opportunity [for] all citizens regardless of race, creed, or color."

In May 1954 the Supreme Court concurred with the arguments put forward by NAACP counsel. "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education," the Court held. "Such an opportunity…is a right which must be available to all on equal terms." The Court further ruled that "separate educational facilities" are "inherently unequal." *Brown* ushered in a decade of protest that succeeded in dismantling Jim Crow. Effective school desegregation, however, would not begin in the South until the late 1960s.

In the aftermath of the *Brown* ruling, NAACP general counsel Robert L. Carter, who argued three of the cases making up *Brown*, took the legal campaign for school desegregation north. By then, half of African-Americans lived outside the South, and the vast majority attended segregated schools. During the 1960s Carter and his associates worked to establish that whenever school assignment policies or organization produced inferior education of black children, whether intentional or not, it was a violation of the Fourteenth Amendment's mandate that black children receive equal educational opportunity. The Court refused to support such an expansive reading of *Brown*. A relatively brief experiment with court-ordered busing in the 1970s to correct intentional segregation advanced the desegregation process in selected areas. But white flight, along with federal policies and court rulings, narrowed the application of this strategy, and the Supreme Court ultimately lifted these orders and ruled that race-conscious remedies themselves were unconstitutional.

In 2004 the profile of educational opportunity for a significant segment of African-American children mirrors the pre-*Brown* era. Predominantly black and minority schools are most often housed in crumbling facilities, suffer from starved budgets and

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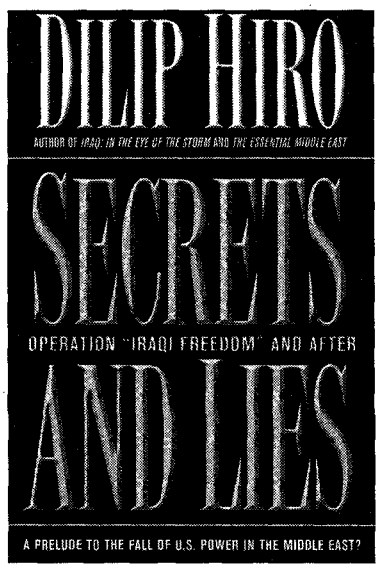
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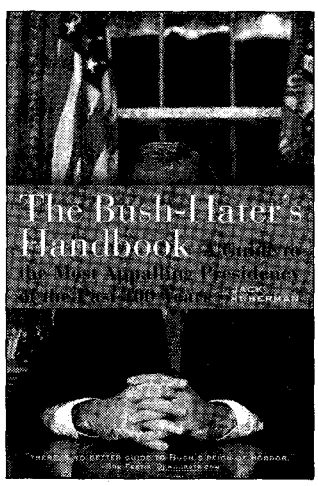

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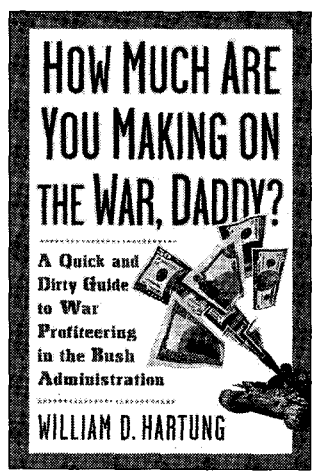
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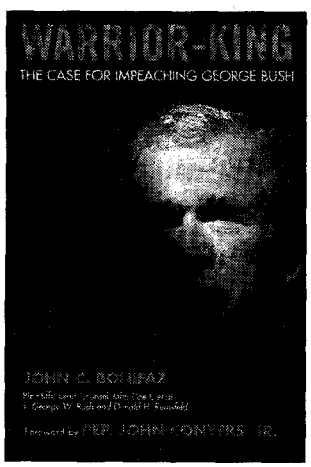

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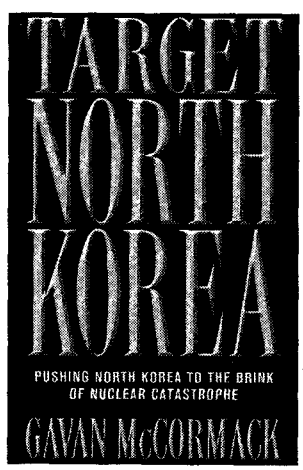

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lack essential resources. The persistence of racial inequality—as measured by income, joblessness and underemployment, and rates of incarceration—is closely linked to an educational system that barely functions for a large number of black children and fails to address the needs of many more.

Although *Brown* has not achieved its primary purpose—to guarantee equal educational opportunity for all African-American children—its mandate is written into law and history and continues to shape the struggle for racial and social justice. Innovative leadership committed to the long haul has been the hallmark of past efforts and continues to be essential. Among hopeful developments are the growing efforts to "fix the schools" in poor neighborhoods and create quality education where children live. School equalization suits seek an opening toward this end, along with experimental schools and programs anchored in the communities they are designed to serve.

The Algebra Project, founded and directed by civil rights activist Robert Moses, offers a compelling model for ways of engaging communities in the transformation of their schools and providing children with access to math literacy, a fundamental tool for full participation in contemporary society. Moses traces a direct link between the struggle for equal education today and the civil rights struggles of the past. Reforms will do little to promote structural change, he explains, without an ongoing effort to empower the affected communities "to demand access to literacy for everyone." This, in the end, is *Brown*'s most enduring legacy.

Patricia Sullivan teaches history at the University of South Carolina and is the author, most recently, of Freedom Writer: Virginia Foster Durr, Letters From the Civil Rights Years *(Routledge).*

★

Jacquelyn D. Hall

A monumental victory when it first appeared, the *Brown* decision now threatens to become a bulwark of inequality. The glory of *Brown* was its ringing endorsement of educational equality and its understanding that—in the face of centuries of forced segregation, economic exploitation and cultural denigration—separate could never be equal. It is not the decision itself but the way we remembered it that has gone wrong, for a flawed "master narrative" prevents *Brown* from speaking effectively to the challenges of our time. That narrative confines the civil rights movement to the years between the Supreme Court decision and the 1965 Voting Rights Act and to the goal of formal equality before the law. This truncated story line makes it all too easy for conservatives to misappropriate the *Brown* decision as a triumph for colorblindness and use it to reify a legal fiction that draws a sharp line between de jure and de facto segregation.

Nineteen fifty-four was a pivotal moment in a long civil rights movement, whose goals went far beyond ending de jure segregation. This nationwide struggle was rooted in the liberal and radical milieu of the late 1930s, emerged decisively with the great migration of blacks to the cities during World War II and continued through the 1970s, when civil rights advocates fought to make use of the gains they had won.

A black-union-left coalition led the movement in the 1940s. Pursuing a social democratic vision in which political, social and economic rights were fused, it won landmark victories, including mass unionization, the desegregation of higher education, fair employment and open housing laws. On the other side stood a Congressional alliance of conservative Southern Democrats and Northern Republicans, along with the first generation of "suburban warriors," who were encouraged by government policies and profit-hungry real estate companies to shut out black homeowners and devise student assignment plans that deepened segregation in the North and West. The cold war gave the civil rights movement's enemies a devastating weapon: a red scare that equated social provisions with socialism, severed civil rights from economic justice and narrowed the political discourse on which later activists could draw.

When the movement re-emerged in the mid-1950s, it struck at the racial order's Achilles' heel: state-mandated apartheid in the South. Combining moral force with strategic brilliance, it enlisted the Supreme Court, forced the hand of the federal government and brought local opponents to their knees. But physical separation was never white supremacy's major goal. Segregation insured racial hierarchy and a cheap, undereducated, politically demobilized and racially divided labor supply. This system of "racial capitalism" deprived blacks and many poor whites not only of civil rights but of social and economic citizenship as well.

By the time the legal edifice of segregation crumbled, moreover, state-subsidized suburbanization had already spatialized race, blurring the line between de jure and de facto segregation in both the South and the North. For that reason, farsighted civil rights activists fought against what has now become judicial principle: the assumption that only recent, intentional, provable, state-sponsored segregation is actionable at law—an assumption that does not necessarily flow from *Brown* and that flies in the face of history, but has now been enshrined by the courts.

In the late 1960s and early '70s, civil rights activists returned to the economic issues of the 1930s and '40s. At the same time, a combination of court oversight and grassroots pressure gave the South the most integrated school system in the country. Too often desegregation was a cultural one-way street, in which black teachers were fired and cherished black institutions were destroyed. Yet interviews conducted by the Southern Oral History Program at the University of North Carolina suggest that for many students in the 1970s, the experience was life-changing in ways that cannot be captured by the statistical studies on which judgments about the success or failure of integration too often rely.

We now face a situation in which the federal courts are preventing local communities from pursuing race-conscious policies, while segregated housing remains deeply entrenched. The result will be two school systems: one filled with nonwhite children from low-income families and one with middle-class children, most of whom are white, along with our most qualified teachers.

We cannot address this crisis by commemorating the *Brown* decision in the register either of triumph or declension. Instead, we must grapple with the long civil rights movement as an unfinished revolution whose gains are once again being partially reversed. The culprit now, as in the past, is not just overt racism

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but public policies that are ostensibly colorblind, yet deliberately shape the landscape of race. We need stories that dramatize that hidden reality, stories that have no satisfying upward or downward arc, stories that call us to a struggle whose end is still not in sight.

Jacquelyn D. Hall, who teaches at the University of North Carolina, is director of the Southern Oral History Program. She is a fellow at the Radcliffe Institute for Advanced Study at Harvard University.

★

Jonathan Kozol

Although the subject is seldom talked about in public-policy debate, I believe the goal of educational desegregation is as relevant today as it has ever been. Virtual apartheid is a fact of life in almost every urban school I visit nowadays. "During the 1990s," as the Harvard Civil Rights Project has observed, "the proportion of black students in majority white schools" decreased "to a lower level than in any year since 1968." In most of the schools I visit, black and Hispanic students make up more than 95 percent of the population.

There is, moreover, little pretense any longer that these schools, while obviously separate, are somehow of equal quality to those attended by the children of the mainstream of society. Despite a number of hard-won legal victories that, in principle at least, compel a state to offer what is known as "adequate provision" to the children of a segregated district, grave inequities persist. Three times in the past seven years, Ohio's highest court has found the education finance system in that state unconstitutional, but the governor and legislative leaders have defied these court decisions with impunity. In Illinois, after many years of legal action, inequalities remain intractable: The children of all-black East St. Louis receive a public education worth $8,000 yearly, while the children of Lake Forest, a predominantly white suburb of Chicago, receive $18,000. In New York City, despite a victorious legal action brought by the Campaign for Fiscal Equity, per pupil spending ($10,500) remains half that of the rich Long Island suburb of Manhasset, where some $21,000 is invested yearly in each child's education.

Even in those cases where per pupil spending in an inner-city district may approach the levels of surrounding suburbs, other forms of inequality remain entrenched. The squalor of decrepit infrastructure, the assignment of the least prepared and often uncredentialed teachers to the schools in greatest need, the demoralization of intensely concentrated poverty and the visceral message given to children by the very fact of racial sequestration continue to be potent forces in perpetuating the caste divisions of American society.

The punitive testing and accountability agendas set in place in the past decade have not lessened these divisions and, indeed, have deepened them by forcing many inner-city schools to gravitate to drill-and-grill curriculums, keyed tightly to the isolated particles of knowledge to be tested by exams, which leave no room for the more wholesome and authentic forms of learning that cannot be measured by empirical assessments. Critical consciousness in schools like these has been subordinated to the goal

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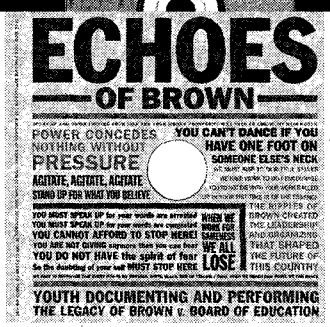
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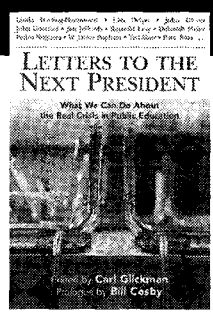

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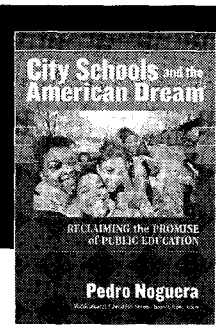

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of turning children of minorities into examination soldiers—unquestioning and docile followers of proto-military regulations. (The former head of the Chicago Public Schools, indeed, referred to "training manuals" for the National Guard as the model that inspired him to chose these methods of instruction.) The insidious acceptance of apartheid pedagogies as the favored instruments of teaching for apartheid's children thus compounds the many other inequalities these children face.

No matter what the present disposition of the federal courts, activists ought to be raising hell in the suburban districts that surround our major cities to break down the barriers to residential integration and, as a half-step in that direction, to expand the voluntary interdistrict school desegregation programs that exist already. In Boston, more than 3,000 children now participate in such a program and attend the schools of more than thirty suburbs. There are an additional 16,500 on the waiting list. Similarly long waiting lists exist in other cities. Whatever the rhetoric one sometimes hears from racial separatists, the overwhelming numbers of the parents of black children—those, at least, with whom I speak regularly—have not renounced the dream embodied in the words of *Brown*, and they refuse to settle for the tainted promises held out by *Plessy v. Ferguson*. Those waiting lists for hundreds of our very best suburban schools should represent a pressing challenge to the multitude of thoughtful liberals who live within those districts but refuse to speak out boldly on this issue.

This is only one of several areas in which young activists ought to be challenging their elders. They should be mobilizing, too, against the mania of high-stakes testing and the associated policies of nonpromotion and nongraduation that are driving an increasing number of black and Latino students to drop out of high school altogether. They ought to be demanding that the presidential candidates speak out forthrightly on these issues. Instead of pressing the candidates merely to modify the more draconian aspects of "No Child Left Behind," they ought to be asking why this simple-minded and destructive legacy of President Bush ought not to be overthrown in its entirety. Hard issues need hard questions. On all these fronts, a tough and restless grassroots activism that refuses to romanticize and justify apartheid education is as badly needed now as it was fifty years ago.

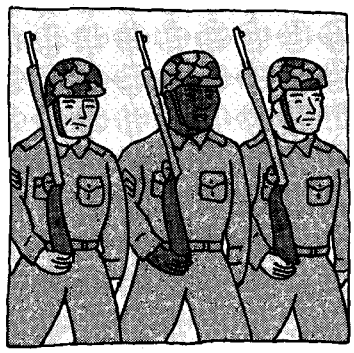
Jonathan Kozol is the author of Savage Inequalities *(Perennial) and other books on separate and unequal education.*

AT THE TIME, THE JUSTICES HAD DOUBTS THAT *BROWN* WAS RIGHTLY DECIDED.

It Could Have Gone the Other Way

MICHAEL J. KLARMAN

In the fifty years since it was decided, *Brown v. Board of Education* has become a legal icon. The rightness of this famous decision invalidating racial segregation in public schools is no longer open to debate. Conservative legal commentators and prospective judicial nominees still criticize many landmark decisions of the Warren Court, but not *Brown*. No constitutional theory or theorist failing to support the result in *Brown* will be taken seriously today.



SEYMOUR CHWAST

Such was not always the case. A Gallup poll taken the summer after *Brown* revealed that nearly half of all Americans opposed the decision. In the 1950s, eminent judges and law professors—including the great jurist Learned Hand—questioned whether it was rightly decided. Perhaps most surprisingly, the Justices who decided the case had grave doubts themselves whether invalidating school segregation was legally justified.

In a memorandum dictated the day *Brown* was decided, Justice William O. Douglas observed that a vote taken after the case was first argued in 1952 would have been "five to four in favor of the constitutionality of segregation in the public schools." Justice Felix Frankfurter's head count was only slightly different: He reported that a vote taken at that time would have been five to four to overturn segregation, with the majority writing several opinions.

Brown was hard for many of the Justices because it posed a conflict between their legal views and their personal values. The sources of constitutional interpretation to which they ordinarily looked for guidance—text, original understanding, precedent and custom—indicated that school segregation was permissible. By contrast, most of the Justices privately condemned segregation, which Justice Hugo Black called "Hitler's creed." Their quandary was how to reconcile their legal and moral views.

Frankfurter preached that judges must decide cases based on "the compulsions of governing legal principles," not "the idiosyncrasies of a merely personal judgment." In a 1940 memorandum, he noted that "no duty of judges is more important nor more difficult to discharge than that of guarding against reading their personal and debatable opinions into the case."

Yet Frankfurter abhorred racial segregation. In the 1930s he served on the legal committee of the NAACP, and in 1948 he hired the Court's first black law clerk, William Coleman. Nonetheless, he insisted that the Court could invalidate segregation only if it was found legally as well as morally objectionable.

Michael J. Klarman, James Monroe Professor of Law and professor of history at the University of Virginia, is the author of From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality *(Oxford).*

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Frankfurter had difficulty finding a compelling legal argument for striking down segregation. His law clerk, Alexander Bickel, spent a summer reading the legislative history of the Fourteenth Amendment, and he reported to Frankfurter that it was "impossible" to conclude that its supporters had intended or even foreseen the abolition of school segregation.

To be sure, Frankfurter believed that the meaning of constitutional concepts can change over time, but as he and his colleagues deliberated, public schools in twenty-one states and the District of Columbia were still segregated. He could thus hardly maintain that evolving social standards condemned the practice. Furthermore, judicial precedent, which Frankfurter called "the most influential factor in giving a society coherence and continuity," strongly supported it. Of forty-four challenges to school segregation adjudicated by state appellate and federal courts between 1865 and 1935, not one had succeeded. On the basis of legislative history and precedent, Frankfurter conceded that "*Plessy* is right." (*Plessy v. Ferguson* was the 1896 "separate but equal" decision upholding the constitutionality of state-mandated segregation on railroads.)

Brown presented a similar dilemma for Robert Jackson. In a 1950 letter Jackson, who had left the Court during the 1945–46 term to prosecute Nazi war criminals at Nuremberg, wrote to a friend: "You and I have seen the terrible consequences of racial hatred in Germany. We can have no sympathy with racial conceits which underlie segregation policies." Yet, Jackson thought judges were obliged to separate their personal views from the law, and he was loath to overrule precedent.

In the early 1950s the views of most Justices reflected the dramatic popular changes in social attitudes resulting from World War II.

Jackson revealed his internal struggles in a draft concurring opinion that began: "Decision of these cases would be simple if our personal opinion that school segregation is morally, economically or politically indefensible made it legally so." But because Jackson believed that judges must subordinate their personal preferences to the law, this consideration was irrelevant. When he turned to the question of whether existing law condemned segregation, he had difficulty saying that it did: "Layman as well as lawyer must query how it is that the Constitution this morning forbids what for three-quarters of a century it has tolerated or approved.... Convenient as it would be to reach an opposite conclusion, I simply cannot find in the conventional material of constitutional interpretation any justification for saying that in maintaining segregated schools any state or the District of Columbia can be judicially decreed, up to the date of this decision, to have violated the Fourteenth Amendment."

That the nine Justices who initially considered *Brown* would be uneasy about invalidating segregation is unsurprising. All of them had been appointed by Presidents Roosevelt and Truman on the assumption that they supported, as Jackson put it, "the doctrine on which the Roosevelt fight against the old court was based—in part, that it had expanded the Fourteenth Amendment to take an unjustified judicial control over social and economic affairs." For most of their professional lives, these men had criticized judicial activism as the thwarting of the popular will by unelected judges who were inscribing their social and economic biases onto the Constitution. Jackson's law clerk, William Rehnquist, wondered, if school segregation were found unconstitutional, whether any distinction would remain between this Court and its predecessor, except in "the kinds of litigants it favors and the kinds of special claims it protects."

Several Justices doubted that the Court was the right institution to forbid segregation. Chief Justice Fred Vinson insisted, "It would be better if [Congress] would act." Jackson lamented that if the Court had to decide the question, "then representative government has failed."

In the end, even the most conflicted Justices voted to invalidate segregation. How were they able to overcome their initial doubts? In 1954 the law—as understood by most of the Justices—was reasonably clear: Segregation was constitutional. For the Justices to reject a result so clearly indicated by the conventional legal sources suggests that they had very strong personal preferences to the contrary.

And they did. Although the Court had unanimously and casually endorsed public school segregation as recently as 1927, by the early 1950s the views of most of the Justices reflected the dramatic popular changes in racial attitudes and practices that had resulted from World War II. The ideology of the war was antifascist and prodemocratic, and the contribution of African-American soldiers was undeniable. Upon their return to the South, thousands of black veterans tried to vote, many expressing the view of one such veteran that "after having been overseas fighting for democracy, I thought that when we got back here we should enjoy a little of it." Thousands more joined the NAACP, and many became civil rights litigants. Others helped launch a postwar social movement for racial justice.

Other developments in the 1940s fueled African-American progress. Over the course of the decade more than one and a half million Southern blacks, pushed by changes in Southern agriculture and pulled by wartime industrial demand, migrated to Northern cities. This mass relocation—from a region in which blacks were almost universally disenfranchised to one in which they could vote nearly without restriction—greatly enhanced their political power; indeed, they became a key swing constituency in the North. Other blacks migrated from farms to cities within the South, facilitating the creation of a black middle class that had the inclination, capacity and opportunity to engage in organized social protest.

The onset of the cold war in the late 1940s created another impetus for racial reform. In the ideological contest with Communism, American democracy was on trial, and Southern white supremacy was its greatest vulnerability. The Justice Department's brief in *Brown*, which urged the Court to invalidate school segregation, emphasized that "racial discrimination furnishes grist for the Communist propaganda mills." After *Brown*, a supporter of the decision boasted that America's leadership of the free world "now rests on a firmer basis" and that American democracy had been "vindicat[ed]...in the eyes of the world."

By the early 1950s such forces had produced concrete racial

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reforms. In 1947 Jackie Robinson desegregated major league baseball. In 1948 Harry Truman issued executive orders desegregating the federal military and civil service. Dramatic changes in racial practices were occurring even in the South. Black voter registration there increased from 3 percent in 1940 to 20 percent in 1950. Dozens of urban police forces in the South, including some in Mississippi, hired their first black officers. Minor league baseball teams, even in such places as Montgomery and Birmingham, Alabama, signed their first black players. Most Southern states peacefully desegregated their graduate and professional schools under court order. Blacks began serving again on Southern juries. In many Southern states, the first blacks since Reconstruction were elected to urban political offices, and the walls of segregation were occasionally breached in public facilities and accommodations.

As they deliberated over *Brown*, the Justices expressed astonishment at the extent of the recent changes. Sherman Minton detected "a different world today" with regard to race. Frankfurter noted "the great changes in the relations between white and colored people since the first World War" and remarked that "the pace of progress has surprised even those most eager in its promotion." Jackson may have gone furthest, citing black advancement as a constitutional justification for eliminating segregation. In his draft opinion he wrote that segregation "has outlived whatever justification it may have had.... Negro progress under segregation has been spectacular and, tested by the pace of history, his rise is one of the swiftest and most dramatic advances in the annals of man." Blacks had thus overcome the presumption of inferiority on which segregation was based.

The violence fomented in the South against peaceful protesters and broadcast on national television produced a counterbacklash.

It was these sorts of changes—political, social, demographic and ideological—that made *Brown* possible. Frankfurter later conceded that he would have voted to uphold public school segregation in the 1940s because "public opinion had not then crystallized against it." The Justices in *Brown* did not think they were creating a movement for racial reform; they understood that they were working with, not against, historical forces.

If *Brown* was more a product than a cause of the civil rights movement, what precisely were the decision's effects? *Brown* played a role both in generating direct action and in shaping the response it received from white Southerners. Any social protest movement must overcome a formidable hurdle in convincing potential participants that change is feasible, and the *Brown* ruling made Jim Crow seem more vulnerable. It raised the hopes and expectations of black Americans, which were then largely dashed by the massive resistance to desegregation engineered by Southern whites; this demonstrated that litigation alone could not produce meaningful social change. *Brown* also inspired Southern whites to try to destroy the NAACP, with some temporary success in the Deep South. This effort unintentionally forced blacks to support alternative protest organizations, which embraced philosophies more sympathetic to direct action.

Finally, and perhaps most important, *Brown* produced a political backlash among Southern whites, which increased the chances that once civil rights demonstrators appeared on the streets, they would be greeted with violence rather than with gradualist concessions. As Southern blacks, inspired by the Court's ruling, filed school desegregation petitions and lawsuits, Southern whites mobilized extraordinary resistance in response. Politics moved dramatically to the right, moderates lost power and extremists prospered. In the mid-1950s racial retrogression characterized the South, as progress that had been made in black voting, university desegregation and the integration of athletic competitions was halted and then reversed. Politicians used extremist rhetoric that encouraged violence, and some of them, such as Bull Connor and George Wallace, correctly calculated that the violent suppression of civil rights protests would win votes. Court-ordered desegregation also created concrete occasions for violence, usually in settings that insured that white supremacists would look bad.

That landmark Supreme Court decisions sometimes produce such backlashes is unsurprising. When the Justices resolve controversies that rend the nation, their rulings naturally arouse opposition among those who lost in the Court. Perhaps more important, Court decisions can disrupt the order in which social change might otherwise have occurred by dictating reform in areas where public opinion is not yet ready to accept it. In the early 1950s most Southern blacks were more intent on securing voting rights, curbing police brutality, improving black schools and winning access to decent jobs than they were on integrating grade schools. Most Southern whites were far more resistant to desegregating schools than they were to making concessions on black voting, school equalization and so forth. Given these contrasting preferences, political negotiation between blacks and whites, assuming that blacks had sufficient clout to compel negotiation, would certainly not have focused immediately on school desegregation. Yet courts respond to agendas set by litigants, not by political negotiation. By demanding change first on an issue where whites were most opposed to it, the *Brown* decision encouraged massive resistance.

Backlashes themselves may have unpredictable consequences. The violence that *Brown* fomented in the South, especially when it was directed at peaceful protesters and broadcast on national television, produced a counterbacklash. In 1954 most Northerners agreed with *Brown* in the abstract, but their preferences were not strong enough to make them willing to face down the resistance of Southern whites. It was violence against civil rights demonstrators that transformed national opinion on race. By the early 1960s, Northerners were no longer prepared to tolerate brutal beatings of peaceful black demonstrators, and they responded to such scenes by demanding civil rights legislation that attacked Jim Crow at its core.

Brown mattered, but it did not fundamentally transform the nation; Supreme Court decisions never do. The Justices are too much a product of their time and place to launch social revolutions. And, even if they had the inclination to do so, their capacity to coerce change is too heavily constrained. The Justices were not tempted to invalidate school segregation until a time when half

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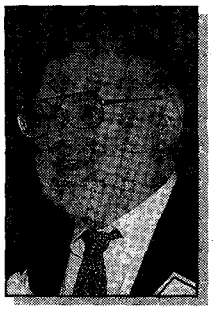

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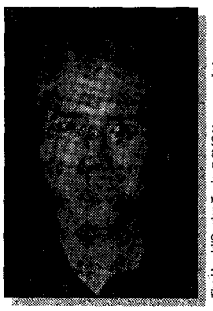

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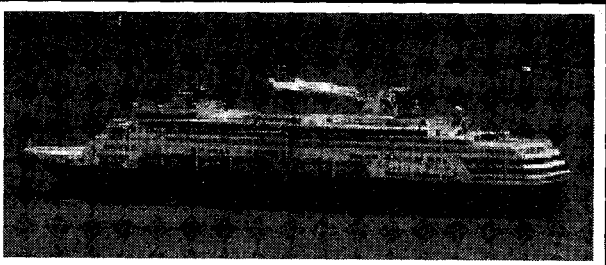
Dec. 8	Wed	Phillipsburg, St. Maarten	8:00AM	6:00PM
Dec. 9	Thu	Road Town, Tortola	7:00AM	4:00PM
Dec. 10	Fri	Day at Sea		
Dec. 11	Sat	Half Moon Cay, Bahamas	8:00AM	4:00PM
Dec. 12	Sun	Ft. Lauderdale, Florida	8:00AM	



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the nation supported such a ruling. They declined to enforce the *Brown* decision aggressively until a civil rights movement had made Northern whites as keen to eliminate Jim Crow as Southern whites were to preserve it. And while *Brown* did play a role in shaping both the civil rights movement and the violent response it received from Southern whites, deep historical forces insured the development of a racial reform movement in America regardless of what the Supreme Court did or did not do. ■

THE PRODUCT OF BLACK LEGAL SKILL AND STRATEGY, *BROWN* HAS A BLACK COPYRIGHT.

The Long Road to Equality

ROBERT L. CARTER

In the early 1930s the NAACP took on as its primary mission the elimination of segregation in public education, from primary school to the highest reaches of the state university system, including the graduate and professional schools. Charles Houston was hired as NAACP counsel to undertake this assignment.

SEYMOUR CHWAST

Houston viewed the Fourteenth Amendment to the US Constitution as the black Magna Carta. He was convinced that the strategic use of test cases to challenge the constitutional validity of racial discrimination in the various areas of American life would eventually put that detriment to blacks beyond the pale.

In 1929 Houston became dean of Howard University Law School and transformed his idea into school policy. For at least the next decade the law school trained its students in the use of the Fourteenth Amendment to fight racial discrimination and urged its graduates to return home and put various local discriminatory policies and practices to the constitutional test. Thus civil rights law was conceived; it would become a course of study in every mainstream law school in the country.

Houston succeeded in securing the admission of Donald Murray to the University of Maryland Law School in 1936. In a subsequent suit he opened the University of Missouri Law School to black applicants. This landmark case, *Missouri ex rel. Gaines v. Canada*, was decided by the US Supreme Court in 1938.

Segregation had been given the Supreme Court's stamp of approval in 1896 in *Plessy v. Ferguson* under the separate-but-equal doctrine, which held that blacks could be kept apart from whites as long as the facilities to which blacks were confined were substantially equal to those for whites. While segregation was firmly enforced, the segregating states were lax about providing equal facilities. In the *Gaines* case the Supreme Court ruled that Missouri had to admit black resident applicants to the university law school because it had not provided them with separate equal facilities as required by the *Plessy v. Ferguson* doctrine.

The case had a personal resonance for me. I was a law student at Howard at the time, and it was the first Supreme Court argument I had heard. At the hearing, when Houston rose to begin his argument Justice James McReynolds turned in his chair and kept his back to Houston throughout his presentation. In retrospect, it seems remarkable that no one witnessing this petty discourtesy from an official supposedly representing all Americans, whatever their race, color or ethnicity, reacted with disapproval. Nor do I myself recall feeling any outrage at the time. In 1938 the second-class status of blacks was accepted by both blacks and whites as a fact of life. We have moved on from that era, and I am now filled with anger whenever I recall Justice McReynolds's unseemly behavior. Of course, any Supreme Court Justice guilty of such demeaning action today would become the center of a national firestorm.

Shortly after the *Gaines* victory, Houston left the NAACP and turned the job over to his assistant and former student, Thurgood Marshall. I became Marshall's assistant in 1945. The drive to end discrimination in education had been put on the back burner during World War II. At the time, Marshall had no staff and was chiefly involved in opening the Democratic Party primary in the South to give meaningful effect to the black electorate's constitutionally protected right to vote. I joined the legal staff of the NAACP with the credentials of a scholar. I had graduated from Lincoln University and Howard University Law School with high honors and was awarded a Rosenwald fellowship, which enabled me to enroll in Columbia University seeking a doctorate in juridical science based on a doctoral thesis that would probe the extent to which the preservation of the First Amendment was essential for the maintenance of a democratic society.

I completed part of my doctoral thesis in August 1941, qualifying for an LLM degree, which was awarded in February 1942. By that time I had been drafted and had completed roughly six months of service in the Army Air Corps. My armed forces career was marred by a series of confrontations and encounters with military personnel generated by racial bias and antipathy. I came out of the armed services disillusioned, angry and determined to use whatever talents I possessed to try to outlaw racial segregation and discrimination. Judge William Hastie, then dean of Howard University Law School and a heroic figure to me, recommended my employment on the legal staff of the NAACP.*

Robert L. Carter, a senior United States district judge, Southern District of New York, was chief assistant to Thurgood Marshall from 1945 to 1956 and NAACP general counsel from 1956 to 1968. His memoir will be published by the New Press this fall.

* Several years later I was able to take Hastie off the pedestal on which I had perched him and view him as a human being and yet admire him as before. It was at that point, I believe, that I reached maturation.

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Because I had scholarly credentials, my charge as assistant NAACP counsel was to expand the law's reach on issues of racial equality, and particularly to devise the legal strategy that would invalidate government-mandated segregation in education and subsequently in all other areas of American life.

After trying a few pending voting-rights cases and a teachers' salary case in Mississippi, in which I supervised and assisted Constance Baker Motley, who had just become a full-time member of the staff in her first trial, I began concentrating on education. By 1950, after the Supreme Court's decisions in *Sweatt v. Painter*, *Sipuel v. Board of Regents of the University of Oklahoma* and *McLaurin v. Oklahoma State Regents* (my first argument before the High Court), qualified blacks were entitled to admission to state university colleges and graduate and professional schools on a basis that left the separate-but-equal doctrine moribund but still alive.

Public school segregation was our next and final target. In approaching this issue it was clear that the Court's rationale for determining whether the facility set aside for blacks at the university level met the requirements of the *Plessy* doctrine (for example, the black facility would be found lacking on the basis of comparing its alumni against the long line of distinguished alumni of the main institution; the public would perceive the black facility as an inferior academy; and there was a need for free intellectual intercourse) would not be persuasive in seeking to outlaw segregation in primary and secondary schools, where the physical facilities, curriculums, courses of instruction and teaching personnel were supposed to mirror one another. We could prove there were disparities in the physical facilities, but eliminating these deficiencies, though it could result in improvements at the segregated schools, would leave the *Plessy* doctrine alive and well. We were eager to have "separate but equal" explicitly overruled.

This majestic ruling was compromised by the 'all deliberate speed' relief formula the Supreme Court adopted in 1955.

I thought I had found what was needed in a study by Otto Klineberg, a professor in the social science department at Columbia University. He showed that the longer black children migrating from the South to Philadelphia remained in the city's integrated schools, the higher they scored on IQ and intelligence tests administered by school officials. I interpreted this data as evidence that segregation had a deleterious effect on black children's ability to learn.

I went to see Professor Klineberg and told him that we were preparing for a trial in Clarendon County, South Carolina, attacking segregation in its public schools and that his study supported our contention that segregation adversely affected the ability of black children to learn. I asked him to testify as one of our experts. Klineberg said no, but told me about the work of Drs. Kenneth and Mamie Clark, both products of Columbia University graduate school, who used dolls to show the impact of discrimination on black children.

The Clarks had founded the Northside Center for Child Development in Harlem, a not-for-profit agency for disturbed children and their families. It was the only such agency of its kind in New York, and probably the nation. Mamie ran the center, while Kenneth held professorial rank at City University, teaching courses in psychology.

Their doll test is as follows: African-American children are shown a black and a white doll and asked to indicate which is the good doll and which is the bad doll. African-American children invariably attributed all negative traits to the black doll, all positive ones to the white doll and bonded with the white doll as being most like them. We had Kenneth use the dolls to test the children in the South Carolina case (*Briggs v. Elliott*) and relate the results as one of our expert witnesses. The Clarks also sat at the counsel table with me in the two other cases I tried, helping me prepare the cross-examination of the state's psychologist and psychiatrist in those cases. I took Jack Greenberg, who had joined the legal staff circa 1948, with me to Topeka to supervise and assist him in trying his first case.

Brown v. Board of Education is the rubric under which the four state cases brought under the Fourteenth Amendment were combined and litigated. I tried *Briggs v. Elliott* from South Carolina, *Brown v. Board of Education* from Topeka and *Davis v. County School Board of Prince Edward County* from Virginia. Jack Greenberg and Louis Redding handled *Gebhart v. Belton* from Delaware, following the legal strategy formulated by me and utilized in all the NAACP-sponsored cases. In addition, there was a case from the District of Columbia (*Bolling v. Sharpe*), which was not part of the NAACP litigation, that sought to have segregated educational facilities struck down under the Fifth Amendment.

We were able to secure a number of social scientists, educators, historians, psychologists, etc., to testify as expert witnesses, once they understood that we did not want them to go beyond what their research could support. Otto Klineberg initially declined to be one of our expert witnesses, I suspect because he thought I would ask him to go out on a limb for the cause. I never wanted our witnesses to do that, since their credibility could be destroyed or made suspect under informed cross-examination. An expert witness whose credibility crumbled under cross-examination could have compromised our effort to persuade the Court to adopt our contentions. Once we made clear to the experts we recruited that we wanted them to testify only about what they could firmly defend, we had little trouble securing experts in history, psychology, education, social science and so forth to become our witnesses.

In the trial of the Topeka, Kansas, case (*Brown*), Louisa Holt, a psychologist who testified about the adverse effects of segregation on black children's ability to learn, said there was an adverse effect on white children as well. She said she had children in the Topeka public schools and that segregation was going to leave her children unprepared to deal with the diverse people and cultures they would face as adults.

In all these cases, our basic thesis was that even if school facilities for black children were made substantially equal to those for whites, segregation nonetheless impaired the ability of the black child to learn and therefore violated the Constitution. The Supreme Court adopted this argument in its

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May 17, 1954, holding on the merits.

Charles Houston was the father of *Brown*. He initiated the legal strategy that ultimately culminated in the May 17, 1954, decision. He secured the admission of the first African-American to the University of Maryland and subsequently won the *Gaines* case requiring equality of physical facilities in fact before segregation could win Court approval. Given the limited number of blacks qualified at the time for entry at the state university graduate and professional school levels, segregation at the highest levels of the state educational system was doomed. It was not feasible on economic grounds, when the few qualified black applicants could be readily absorbed into the main institution. Social science data, moreover, showed that segregation was a restriction on the learning reach of the black child and was at war with the Fourteenth Amendment's equal educational opportunity mandate. *Brown* is, thus, the product of black legal skill and strategy. I have been telling friends jokingly that *Brown v. Board of Education* has an African-American cultural copyright with an acknowledgment of appreciation to the NAACP, but there is truth and reality to that statement. *Brown* was conceived and won through NAACP-sponsored litigation, by lawyers employed by that organization.

The 1954 *Brown* decision is now regarded as the most important Supreme Court decision of the twentieth century. This majestic ruling, however, was compromised by the "all deliberate speed" or "over time" relief formula the Court adopted in 1955, the first time it has ever deferred immediate vindication of a successful litigant's entitlement to a constitutional right. The over-time provision corrupts *Brown* with racist delimitations, scored with a white supremacist brush.

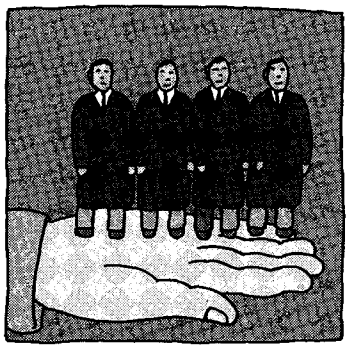
Moreover, taking stock of the current state of public education, it is clear that *Brown* has not achieved its primary purpose of guaranteeing equal educational opportunity for children of color. Yet, in making equality for all people a fundamental tenet in our society, *Brown* provides the foundation for activists and scholars committed to fulfilling its promise to pursue that goal. I am optimistic or fatuous enough to believe that at some future point in time, America will give credence to that unfulfilled promise. ■

HOW FOUR FEDERAL JUDGES BROUGHT THE RULE OF REASON TO THE SOUTH.

The 'Fifth Circuit Four'

JACK BASS

As we commemorate the fiftieth anniversary of *Brown v. Board of Education*, a major element in the American South's social revolution remains hidden in the shadows of history. I refer to the small band of federal judges in the South, mostly Republicans appointed by President Dwight Eisenhower to the Fifth Circuit Court of Appeals, who fleshed out the bare bones of *Brown* and transformed it into a broad mandate for racial justice.



SEYMOUR CHWAST

In the decade and a half after *Brown*, the Supreme Court issued only a handful of civil rights decisions. Instead, it affirmed major Fifth Circuit opinions about civil rights or let them stand without hearing an appeal, sending clear signals to the courts below. Retired Associate Justice Arthur Goldberg explained to me in an interview that the Justices believed that desegregation law shaped by Southern judges would be more acceptable to the South. At that time the Fifth Circuit stretched 1,500 miles, from Savannah to El Paso, and covered six of the eleven states of the Confederacy—Georgia, Florida, Alabama, Mississippi, Louisiana and Texas.

In a 1967 tribute to Chief Judge Elbert Tuttle, the Fifth Circuit's leader, Chief Justice Earl Warren said, "Since he assumed office, the Fifth Circuit has been in the very eye of the storm." One of its decisions "transformed the face of school desegregation law," in the words of J. Harvie Wilkinson, writing as a University of Virginia law professor before joining the Fourth Circuit Court of Appeals, where he became chief judge. That 1967 case, *U.S. v. Jefferson County Board of Education*, also provided the constitutional rationale for affirmative action.

"The Constitution is both color blind and color conscious," Judge John Minor Wisdom wrote in his majority opinion. "To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate government purpose."

Wisdom, the scholar of the court, and Tuttle teamed up with John Brown of Texas, a fellow Republican, and Democrat Richard Rives of Alabama, an intimate of Justice Hugo Black, to implement *Brown*. A colleague on their court, Mississippian Ben Cameron, labeled them "The Four," a clear reference to the Four Horsemen of the Apocalypse. Cameron considered states' rights "the bedrock of our constitutional system" and believed his fellow judges were destroying the social order of the world he knew. Many white Southerners felt the same way about "The Four." Friends shunned them. Their wives received threatening phone calls at home. But the judges never complained.

Legal scholars have only recently begun to recognize the

Jack Bass is professor of humanities and social sciences at the College of Charleston. His books include Unlikely Heroes *(University of Alabama) and* Taming the Storm *(University of Georgia), a biography of Judge Frank Johnson Jr., which won the 1994 Robert F. Kennedy Book Award.*

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"Southern jurisprudence" that emanated from this court in a broad range of cases. They extended the reach of *Brown* with landmark decisions on school integration, voting rights, employment discrimination affecting both blacks and women, rights of prison inmates and the mentally ill, and jury discrimination. The Four recognized that the courts alone could not get the job done, that it would take a commitment by all three branches of government. In applying the due process and equal protection clauses of the Fourteenth Amendment to unprecedented circumstances, however, they developed principles that Congress would incorporate into the landmark 1964 Civil Rights Act and 1965 Voting Rights Act, legislation that granted enforcement power to the executive branch and had a lasting social, economic and political impact on the American South.

Burke Marshall, who served as Assistant Attorney General in charge of the civil rights division in the Kennedy administration, told me, "Those four judges, I think, have made as much of an imprint on American society and American law as any four judges below the Supreme Court have ever done on any court.... If it hadn't been for judges like that on the Fifth Circuit, I think *Brown* would have failed in the end."

The Four also identified closely with legendary trial judge Frank Johnson Jr. in the Middle District of Alabama, whom Yale Law Professor Owen Fiss has called "the John Marshall of the federal district courts." In 1956 Johnson and Rives formed the majority on a three-judge district court that declared segregated seating on city buses in Montgomery unconstitutional, for the first time extending by implication the underlying principle of *Brown* beyond education. The Supreme Court affirmed in a case that both catapulted the leadership role of Martin Luther King Jr. and set the trailblazing path the Fifth Circuit would follow.

The common link among these uncommon judges was their individual status as outsiders. Four were progressive Republicans.

The common link among these uncommon judges was their individual status as outsiders. Four of them were Republicans—Tuttle in Georgia, Wisdom in Louisiana, Brown in Texas and Johnson in Alabama—all from the progressive wing of the party. Tuttle grew up in Hawaii and attended multiracial schools there. Although Wisdom was part of the social elite in his native New Orleans, his Republicanism dated back to his reaction to Huey Long's dictatorial control of Louisiana. Brown grew up in small-town Nebraska, with Abraham Lincoln his boyhood hero. Johnson absorbed the "mountain Republican" tradition of Alabama's Winston County, a Union stronghold in the Civil War. Two of his forebears served as volunteers in the First Alabama Cavalry Regiment of the United States Army, and his father was elected as the only Republican in the Alabama legislature.

Although Rives, a Truman appointee, had plantation-owning ancestors, they lost everything in the Civil War. Too poor to attend college after his freshman year, he "read law" in a Montgomery firm, passed the bar at 19 and later shed his segregationist beliefs under the influence of his Harvard-educated son, who persuaded him to read Gunnar Myrdal's *An American Dilemma*.

The four Republicans each played leadership roles in the 1952 campaign to nominate and then elect Eisenhower. They worked closely with Herbert Brownell Jr., his campaign manager and subsequent Attorney General, striving to build a meaningful two-party political system in the region at a time when the GOP was still the party of Lincoln, and segregationists dominated the one-party Democratic South. Brownell's Wall Street image masked his Nebraska background as a George Norris Progressive with a quiet passion for civil rights. He once proudly mentioned to me his cousin, Susan Brownell Anthony.

Tuttle and Wisdom both led delegations from their respective states of Georgia and Louisiana that challenged the entrenched GOP apparatus in the South, which was committed to Senator Robert Taft of Ohio. Their delegations won seats at the Republican National Convention, a critical factor in Ike's winning the nomination. Brown, then Harris County (Houston) Republican chair, was also seated as part of a challenge delegation. Johnson served as a delegate and headed Veterans for Eisenhower in Alabama.

The Kennedy Justice Department quickly discovered this group of rare men. John Doar (who would follow Burke Marshall as chief of the civil rights division in the Justice Department) told the story of his first meeting with Rives—serving for a year as chief judge before Tuttle—in 1961 at his home in Montgomery just before midnight after flying in on a small chartered plane with an assistant state attorney general from Mississippi. Doar explained that the Justice Department was seeking a temporary restraining order to prevent the State of Mississippi from prosecuting the next day a civil rights worker who had been hit over the head by a rural county voting registrar (US District Judge William Harold Cox had denied relief). The Mississippi lawyer talked at length about the sovereignty of the State of Mississippi and the importance of their prosecution.

In his gentle, courteous way, Rives told him, "You know I don't want to issue a restraining order against the state of Mississippi. But I think I'd be forced to do that until I can convene a panel [the appeals court hears cases before three-judge panels]. Why can't we agree that you won't go forward until a panel of the Fifth Circuit hears this case?" Mississippi's lawyer quickly accepted.

Doar recalled, "That was my first introduction to one of those judges on the Court of Appeals. I really thought I was in the presence of a great man. He had such gentleness and courtliness. His mind was so clear. And he knew exactly what he was going to do. He could express what he required the lawyers to do. And he was thoughtful. And, of course, I thought he had just a tremendous feel for the history of the South. Just a remarkable man."

Doar soon met the others and quickly recognized each as exceptional. Tuttle found previously unused authority to overcome procedural tactics of delay, whether by lawyers or recalcitrant district judges. For example, in early 1961 District Judge William Bootle issued a stay of his own integration order for the University of Georgia two days before the first black students were to enroll. There was no stated reason other than that the university had asked for it. Within hours the NAACP Legal Defense Fund lawyer Constance Baker Motley filed an appeal with Tuttle; he restored the integration order, finding authority to act alone in

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an obscure subparagraph—Rule 62(g)—of the Federal Rules of Civil Procedure. The Supreme Court immediately denied the university's appeal, a clear signal of support for Tuttle's bold action.

In contrast to Tuttle and his progressive colleagues, President Richard Nixon began appointing conservatives to the bench as part of the Republican "Southern strategy" in the 1960s of appealing to whites by slowing racial integration. Beginning with Nixon's four appointees, the Supreme Court began to whittle away at *Brown*'s legacy, and over time the Fifth Circuit has become dominated by conservative judges. President Bush's recent recess appointments of Charles Pickering to the Fifth Circuit and William Pryor to the Eleventh (three states from the old Fifth), after opponents charged each with insensitivity on civil rights issues, indicate that the Southern strategy remains alive and well. Whether *Brown*'s legacy will continue to wither or will regain vigor depends on the election outcome this fall.

In 1979 Frank Johnson told Boston University law graduates, "If the life of the law has been experience, then the law should be realistic enough to treat certain issues as special: as racism is special in American history." How well America accepts that admonition ultimately will define the legacy of *Brown*, which Judge Wisdom saw as incorporating into the Constitution the concept of the Declaration of Independence, that all persons are created equal. ■

RACIAL TENSIONS STILL SIMMER IN THE RURAL COUNTY WHERE *BROWN* WAS BORN.

The Heat of Summerton

ALAN RICHARD

America's most famous school desegregation cases didn't begin in Topeka, Kansas. The five cases that were consolidated into *Brown v. Board of Education of Topeka, Kansas* actually began in rural Clarendon County, South Carolina.

SEYMOUR CHWAST

The first case originated in a little town called Summerton and the surrounding flat farmland in the deep east-central part of the state.

Led by a country preacher and schoolteacher named Joseph De Laine, African-American families challenged the community's white establishment and Southern way of life, and would end up changing the world. Yet even though these families paved the way for the Civil Rights Act of 1964 and the integration of public institutions throughout the South and other parts of the country, in the end they largely failed to change the plight of black schoolchildren in their own town. Fifty years after the *Brown* decision, the schools in Summerton remain almost completely segregated by race. This has helped keep generations of black residents undereducated and the town's economy suspended in time.

Inspired by a speech he heard in Columbia by the state NAACP president, the Rev. De Laine returned home to Summerton in 1947 determined to challenge how local black children were educated in Clarendon County—in deplorable old buildings with outdated textbooks. First, De Laine convinced a farmer named Levi Pearson from a nearby crossroads called Davis Station to file a lawsuit demanding that local school leaders pay for repairs on a school bus that transported black children from the distant countryside into Summerton for high school. The case was dismissed on a technicality, but laid the groundwork for what would become *Briggs v. Elliott*—the first of the *Brown* cases.

Black parents in Summerton, meanwhile, had grown tired of a high school principal they believed was incompetent and corrupt. They accused the man of charging improper fees for diplomas and for providing academic courses that didn't even compare favorably with black schools in neighboring areas. The group wanted the principal fired, and they questioned in meetings at local churches why their school system had to be lacking in every way. At one of those organizing meetings, the parents convinced De Laine to take charge of their movement, records show. Later, he and several key plaintiffs in the case met with a young lawyer named Thurgood Marshall. One night in 1949, parents and students gathered in Summerton at the home of gas-station attendant Harry Briggs and his wife, Eliza, a motel housekeeper, to sign a petition that would land on the steps of the Supreme Court.

Once the *Briggs* case gained national publicity, tensions began to run high in Summerton. Most of the parents who signed on to the case lost their jobs or were threatened with firings, and some were evicted from their tenant homes or sharecropper land. De Laine's own remarkable story may be familiar to scholars and students of the civil rights movement, but remains largely unknown even to many South Carolinians. His family's home in Summerton was torched, the family believes, and white firefighters allowed it to burn as horrified black residents watched.

Later, after the *Brown* decision, a suspicious fire broke out at De Laine's church in Lake City. A few days later, drive-by gunmen attacked the family's new home in Lake City. De Laine fired back that night in 1955, wounding some of the men in the car. He fled the same night to Florence, and the next day traveled to New York City, where he would become a pastor in Queens and where he remained, despite South Carolina's unsuccessful

Alan Richard writes about the South and rural America for Education Week, *the leading national K–12 education newspaper. A South Carolina native and former journalist there, he is writing a book about Summerton's role in the* Brown v. Board *cases, marking the fiftieth anniversary of the court decision.*

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attempts to extradite him to face five charges of assault and battery with intent to kill. He led churches in the city and in Buffalo before retiring to Charlotte, North Carolina. He returned to his native South Carolina and Clarendon County only as a fugitive, and in secret—including one visit for his mother's funeral, relatives say. De Laine would be posthumously pardoned in 2000, and federal lawmakers recently voted to award him the Congressional Gold Medal.

Other families left Summerton for economic reasons. Faced with poverty even in better times, with their involvement in the *Briggs* case they incurred the wrath of powerful local white leaders who could cost them their livelihoods. White Citizens' Councils appeared; to this day, white residents of Summerton remember which businesses had the proper stickers on their windows or doors that signified supportive owners. Many of the families involved in *Briggs* moved north as a result of job losses directly linked to the case, along with losses of property, credit at cotton gins or other local businesses, and real threats of violence. Harry and Eliza Briggs lost their jobs and moved north. Others went to Philadelphia or Washington, DC, where jobs were more plentiful and oppression less severe.

Given this hostile atmosphere, Summerton might seem an unlikely birthplace of the legal movement toward equal educational rights for African-Americans. Cases were stirring in Kansas, Virginia, Delaware and Washington, DC—the other sites involved in *Brown* at the Supreme Court level—and any of those cases could have come first. Summerton was unique, however, in that the local people had a dynamic, educated and spiritually motivated leader in De Laine, and he was determined to force change in the county where he had been born and raised.

De Laine won access to Thurgood Marshall and other civil rights lawyers and was successful in pressing the *Briggs* case nationally through *Brown*. After losing the case in federal court, Marshall broadened the suit into a desegregation case that held more promise, and *Briggs* found its footing and a path to the Supreme Court. Locally, however, the case left a more complicated legacy. When De Laine was driven from the state, and other families were forced to flee or decided to leave when violence and threats became too much, the town lost its key African-American leaders and many ambitious young people who might have carried on the minister's fight for equality. Instead, the departures and isolation that followed the backlash to *Briggs* and *Brown* did little to halt school segregation in Summerton.

When much of South Carolina finally bowed to court-ordered school integration in 1970, virtually all the white students in Summerton transferred into a private school opened just for them, sponsored by a local Southern Baptist church. That private school, called Clarendon Hall, almost exclusively enrolls white students to this day, while public schools in Summerton enroll African-Americans almost exclusively. Other rural, majority-black towns and counties in South Carolina and neighboring states have seen much the same white flight from public schools, although white flight was especially pronounced in Summerton from the beginning.

As a result, this town of only 1,000 residents now operates with essentially two separate school systems for white and black children. In the three public schools known collectively as Claren-

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don County School District One, about two dozen of the roughly 1,200 students are white. At the private school, Clarendon Hall, five of the school's 275 students are black, according to a recent count. Those five students are among the private school's first African-American students ever to enroll; the first black students didn't start there until the twenty-first century had begun.

The disparity between the quality of education that Summerton provides its black and white children is apparent. Clarendon One traditionally has been one of the state's worst school districts in terms of student test scores and other measures. This doesn't mean gifted students and teachers haven't been there; nor does it mean some programs in the schools haven't been successful. Overall results tell a dismal story, however: Nearly half the ninth graders in Summerton do not graduate four years later, according to state data. Last year's average SAT score at Scott's Branch High School was 761—the lowest average of any high school in South Carolina and hundreds of points lower than state and national averages.

Still, there are a few signs of progress. Earlier this school year, the town's public elementary school, St. Paul Primary School, saw major gains in test scores. Scott's Branch High last year saw double-digit gains in the percentage of students passing the state's high school exit exam on their first try. School leaders believe that with better motivation, increased training for teachers and help from state-sponsored academic coaches, scores will continue to rise. St. Paul has made distinct aesthetic improvements, and local officials want to replace the school's cramped, aging building with a new campus.

In general, though, the largely African-American public school system has little ability to raise extra money to improve itself. The school district must rely on local property taxes to supplement state funding for schools, which is currently under court challenge from rural school districts, including Clarendon One. That court case is being heard this year, just six miles from Summerton in the county seat of Manning, where the schools are far more integrated. Since few businesses exist in the Summerton area, there is little to tax beyond the property owners, who pay some of the state's highest tax rates (although several years ago the town did pass its first-ever tax increase for school buildings, with the support of some white taxpayers, which helped fund the construction of Scott's Branch High School).

Clarendon Hall, the private school, offers more of its students a chance to attend college or pursue professional careers, but its test scores don't compare well with more reputable preparatory academies, even ones in South Carolina. The average SAT score, for example, is substantially better than the average at Scott's Branch, but still has rated below the national average. While administrators say most of Clarendon Hall's graduates proceed directly to college, and while parents may be attracted by more substantial music and art programs that the public schools cannot always match, the private school's students miss out on interaction with students and teachers of different backgrounds. The small size of the campus helps more students participate in athletics and other activities, but Clarendon Hall's size and limited budget keep teacher salaries around $17,000 a year, and there are no health benefits, making teacher recruitment and retention a serious issue. Even the struggling public schools in Summerton pay teachers more.

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Segregation in the town reaches beyond the schools. Of course, many US cities and suburbs have problems with residential and educational segregation. But while settings in education, commerce and houses of worship are becoming more integrated in some South Carolina communities and in suburban and urban areas of the American South, people in Summerton remain racially separated, and some close observers strongly suggest that this is rooted in the tension around the school desegregation case.

Joseph Elliott, a grandson of R.M. Elliott, the white school board chairman in Summerton who was the lead defendant in the Supreme Court case, says he can't even talk about the ordeal with some of his neighbors and friends because of his more moderate views. After a career in public schools in more integrated parts of the state, he became headmaster at Clarendon Hall. He recalls that before his retirement three years ago, he was stunned when some white parents objected to the all-white school playing its first-ever basketball game against Scott's Branch High, just up the road.

As the fiftieth anniversary of the *Brown* decision arrives, Summerton is gaining notoriety. There is evidence South Carolinians are more willing to reflect on the school desegregation case and its meaning, and on issues of race and ethnicity. Universities are holding symposiums and lectures about the case. Newspapers that have reflected little on the case in the past are publishing special sections on Summerton. A play about the Summerton struggle and some of its key figures, *The Seat of Justice*, debuted in February at Charleston's historic Dock Street Theatre, featuring a remarkably blunt portrayal of white town leaders in Summerton and state officials from the era, including lawyer Robert Figg, once an aide to Strom Thurmond.

Yet visitors to Summerton without prior knowledge of the *Briggs* case would find little evidence of it in the community today. While a historical museum would be an appropriate memorial to the families involved in the case—not to mention a valuable educational resource and tourist draw for those traveling nearby Interstate 95—the town has no such exhibit or even substantial monument marking the case. The only signs that Summerton is where the *Brown* cases began are a state historical marker in disrepair at Liberty Hill African Methodist Episcopal Church outside Summerton (where De Laine's father was a longtime minister and several plaintiffs were members and are buried), and a brick-and-concrete marker in front of the old Scott's Branch High School, now the town's public middle school, across from the lot where the De Laine home stood before the fire.

This spring, some of Summerton's residents will celebrate the legacy of the Rev. De Laine and others who were part of *Briggs v. Elliott*. There will be a parade, guest speakers and the annual fundraising banquet for the Briggs-De Laine-Pearson Foundation, a group that hopes to raise money for a visitor center and parenting classes.

Once this year's events have passed, Summerton will return to its struggle with history. How the residents decide to proceed—with regard to politics, social life and the dual education system that helps define life in the town—will define more clearly the legacy of the *Briggs* case. The Rev. De Laine and his followers somehow had more clarity in the 1940s, pressed into service by the tension of the times and bolstered by the courage that Summerton would do well to remember today. ■

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AFTER BLOODY BATTLES FOR DESEGREGATION, BLACKS IN MEMPHIS ARE STILL BEHIND.

A Dream Deferred

MICHAEL HONEY

Martin Luther King Jr., in a January 19, 1968, speech at Kansas State University titled "The Future of Integration," looked back at the Supreme Court's *Brown v. Board of Education* decision on May 17, 1954, as "the psychological turning point, where people by the thousands began to act." These people created mass movements to implement the decision, but they also went far beyond it. Broad visions of a just society, not simply a quest to sit beside white students in classrooms or in other public facilities, animated the tidal wave of protests that followed *Brown*.

SEYMOUR CHWAST

As one of the major spokespersons for integration, King defined it as "genuine intergroup and interpersonal living" in a just society. By the end of his life, King had moved on to fighting for what he called a "planetary movement" to create a world free of hunger, poverty, war and racial-economic injustice. To think that the *Brown* decision or even the passage of the Civil Rights Act in 1964 and the Voting Rights Act in 1965 could solve the problem of racial discrimination, King said in Kansas, would be "an illusion wrapped in superficiality." In an attempt to implement his larger vision of equality, King tried to organize a multiclass coalition he called the Poor People's Campaign. He died supporting a strike for the right of the black working poor to join a union in Memphis, Tennessee, on April 4, 1968.

Ultimately, King said, achieving equality requires not only full civil rights but also labor rights and social and economic justice. To measure the distance we have traveled or not traveled since the *Brown* decision from this perspective, it helps to do some revisioning of the past from the viewpoint of black workers. As a starting place, it is crucial to remember that *Brown* was as much the product as the precipitator of mass movements. Yes, the decision resulted from the incredibly hard-working and astute battle led by Charles Houston, Thurgood Marshall and others in the NAACP. But it also resulted from mass movements and a vast shift in status among poor and working-class African-Americans, millions of whom moved out of rural areas and into cities and mass-production industries in the 1930s and '40s. They created an expanding membership base for the Congress of Industrial Organizations (CIO), the NAACP and an American left that challenged segregation at every level. Domestic workers, sharecroppers, day laborers, factory workers and other poor people, especially the women among them, organized economic boycotts, picket lines, marches, sit-ins, strikes, church and community groups, unions, consumer cooperatives and mass meetings. Their role as workers, soldiers and activists in the fight against white supremacy at home and fascism abroad created vast social changes that set the stage for *Brown*.

As one example, in the Deep South city of Memphis, African-Americans, who had been organizing unions since after the Civil War, provided the main support that made the rise of the CIO possible, at a time when supporting a union could cost one's life. The purge of the interracial left from the CIO during the cold war undermined civil rights unionism, yet a number of black industrial unionists continued to challenge white supremacy in the 1950s and '60s. Union wages also made it more possible to send children to college, and some of those students led sit-ins and demonstrations against Jim Crow.

The interconnections between labor and civil rights crystallized in Memphis in January 1956, when the Montgomery bus boycott was in its second month. Lonnie Roland, Clarence Coe and other African-American workers at the Memphis Firestone Tire and Rubber plant sued both the company and their union for maintaining segregation at the factory. They secretly collected money from their fellow workers to hire a lawyer and used *Brown*'s condemnation of separate facilities as inherently unequal as justification for the suit. And they won.

Their case was not hard to prove. Roland told me that before their lawsuit "there were no black foremen, no black supervisors, and black people only got to a certain status and stopped there. There was an unwritten law that black people couldn't work high-skilled jobs, couldn't have no top jobs operating no machine." The company kept workers divided into separate departments, with blacks (including women) doing the hottest, dirtiest, heaviest work at the lowest wages. If blacks tried to move into all-white, cleaner and higher-paid tire-building or machine work, they lost all seniority, which accrued by department. They would go to the bottom rung of the advancement ladder and be laid off first, no matter how many years they had worked at the factory.

After the workers won their lawsuit, Coe at Firestone and George Holloway at the International Harvester plant risked life and limb to implement desegregation at their factories and union halls. Whites smashed the windows in Holloway's home and threatened Coe's family, provoking him to put a gun in every room of his home. Blacks challenging factory segregation fought on two fronts, against both white workers and employers. Desegregation struggles nearly led to bloodshed at union meetings, and white workers nearly killed both Coe and Holloway when they used the *Brown* rationale to open up skilled jobs formerly reserved for whites. Such black unionists also supported the NAACP and

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young people challenging segregation in schools, libraries and other public accommodations. Black unionists made up a significant portion of NAACP members in Memphis, Detroit and many other cities.

African-American struggles for desegregation at the point of production could be nearly as bloody as civil rights demonstrations in the streets, and went on for more than twenty years after *Brown*. A cadre of civil rights unionists played important roles in creating the freedom struggle, including Addie Wyatt and other black women in the United Packinghouse Workers of America; E.D. Nixon, president of the Montgomery branch of the NAACP and an activist in the Brotherhood of Sleeping Car Porters union; that union's national president, A. Philip Randolph; Cleveland Robinson and others in the service industries. They organized both workplace struggles and local and national civil rights campaigns such as the 1963 March on Washington for Jobs and Freedom. Black political leaders like Harold Washington in Chicago and Coleman Young in Detroit also emerged from this confluence of labor and civil rights struggles.

As King pointed out, the government's failure to fully implement integration left a generation of black workers severely marginalized.

However, as King pointed out, the great disjuncture of the 1960s grew out of the government's failure to fully implement integration, which left a younger generation of black workers severely marginalized. Raised to work in heavy laboring jobs and handicapped by inadequate segregated schooling, they had almost no chance to get into the white-collar clerical and management jobs expanding during that era. Unemployed young black males formed a smoldering base for rebellion that struck inner cities across the United States from 1964 through 1968. The draft siphoned off many of them to the war in Vietnam, where they died in disproportionate numbers. African-American women increasingly did double duty as wage workers and heads of households, as families fell apart under a growing crisis affecting the black working class.

More black women entered factory production, and a growing movement of black workers in the mid-1960s challenged employment discrimination under Title VII of the 1964 Civil Rights Act. Yet most African-Americans still had no place to go for work but into unskilled, low-wage jobs in the expanding service economy. Thus, in 1968 King recognized that the strike of 1,300 black sanitation workers in Memphis represented the rising struggle of the working poor, whose ranks included black women domestic and service workers as well as black men. He told Memphis strikers, "You are reminding the nation that it is a crime for people to live in this rich nation and receive starvation wages." As black sanitation workers challenged the plantation mentality of the white Mississippi Delta under the slogan "I Am a Man," King decided to make Memphis the starting place for his Poor People's Campaign—a move to demand systemic, radical reform and to divert federal spending from the Vietnam War to programs to create jobs and income and eradicate poverty in America and the world.

Memphis sanitation workers did win their strike. And their success opened the way to unionization of the working poor in government jobs across the country, a major area in which unions have expanded for the past thirty-plus years. King's death forced the intransigent, segregationist mayor of Memphis to allow a strike settlement, which may have benefited the city's black middle class most of all. As sanitation worker Taylor Rogers points out, today in Memphis "city hall is full of blacks, even to the mayor," and organized public workers who vote helped to put them there. Blacks with city and county jobs and in clerical positions as well, he says, "wouldn't be in the position they're in now if it had not been for King comin' here and dyin'."

Within the factories, civil rights unionism succeeded in battering down many of the walls of employment discrimination. Clarence Coe recalled that by the time he and his cohort left Firestone in the early 1980s, "we were virtually equal. If you qualified for something, you just about [always] get it." Lonnie Roland said, "It was different, like night and day." Yet the assassination of King and Bobby Kennedy undercut the multiclass, multiracial alliance and expansive agenda for economic and social justice that King sought. Although the black middle class expanded, from the 1970s onward massive destruction of industrial employment gutted unions and the economic base for black communities in Memphis and across the country.

The tragedy for black workers is hard to fathom. Just as black workers finally implemented *Brown* on the factory floor, employers began to shut their enterprises. RCA television came to Memphis for cheap and quiescent labor but found neither among its assertive, interracial and mostly female workers. It moved production to Mexico and Taiwan. Firestone also subsequently closed its doors, and jobs at International Harvester shrank after a multinational company took it over. American deindustrialization decimated unions and working-class black leadership and undermined church, civic, political, community and family life. Trickle-down Reaganomics in the 1980s gave tax breaks to the rich and unleashed plagues of unemployment, crack cocaine, teen violence and pregnancy, soaring incarceration rates, homelessness and hopelessness in poor black communities. The loss of unionized industrial jobs cut off one of the few historic avenues for upward mobility for the black working class, and those jobs continue to be lost in today's "Bush league" economy.

King warned of this coming catastrophe in many speeches to union members during the 1960s, saying the right-wing agenda was to destroy the gains of both labor and civil rights movements in order to reduce employers' wage costs and foster the political ascendancy of big business. The problem of either no jobs or jobs at poverty wages "is international in scope. And it is getting worse," he said in Memphis. This problem remains the crux of the American failure to implement the vision of equality that inspired so many people after the historic *Brown* decision.

The disaster of industrial decline, accentuated by mechanization and union and job loss in the Mississippi Delta agricultural economy, hit particularly hard in black Memphis. Today a black mayor, former School Superintendent Willie Herrenton, runs Memphis, but the city has the unfortunate distinction of ranking third nationally among large metropolitan areas in the percentage

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of people living in poverty, at over 15 percent. In one overwhelmingly black South Memphis ZIP code, 98 percent of children live in poverty and half the households receive less than $9,000 in annual income, with single women heading some 75 percent of those households. African-Americans in Memphis still disproportionately lack access to good education, decent jobs, sufficient healthcare, adequate housing and other assets that are seen as part of the American dream.

The deficits in education are as bad as in employment. African-Americans have elected black school board leaders and the schools are officially desegregated, but whites have fled in large numbers to the suburbs and private schools. The tax base for city schools has weakened, and the State of Tennessee has nearly gone bankrupt because of its regressive tax system and loss of federal funding, while the federal government's increased demands for testing without sufficient funding have had a demoralizing effect. If *Brown* has triumphed in terms of the law, real desegregation has not. Good public schooling remains as elusive as ever for most black children (and poorer whites) in Memphis.

Today one can almost hear the echoes of King's speech in Kansas. If he were alive to commemorate *Brown*'s fiftieth anniversary, King would again remind us that failure to implement school desegregation is only one marker of an even more profound failure to make equality real for masses of African-American and other workers and poor people. He would still denounce conservative calls for blacks to make it on their own under capitalism. He would still remind us that "it's a cruel jest to say to a bootless man that he should lift himself up by his own bootstraps." He would still link our educational deficits to our rampant racial-economic inequality, and to the conditions of the working poor, who "make wages so low they cannot begin to function in the mainstream of the economic life of our nation."

King would still call on us to be "maladjusted." As he told people in Kansas, "I never intend to adjust myself to economic conditions that will take necessities from the many to give luxuries to the few. I never intend to adjust myself to the madness of militarism and the self-defeating effects of physical violence."

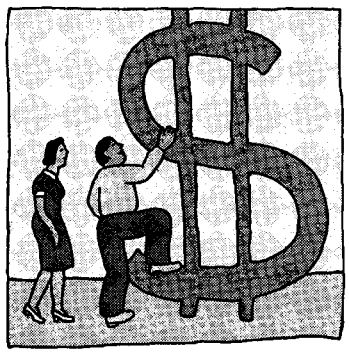
King's economic justice perspective should remain a crucial measure of the distance we have regressed or moved forward since *Brown*. But we should remember, too, as King also taught us, that movements for change are built on hope. Building a broad movement in which workers and the poor play a central role remains an urgent task to create hope for a future of racial justice. And in fact, the kinds of global coalitions and movements for justice and union rights that King envisioned have begun to take shape. The many marvelous histories of freedom struggles and civil rights unionism written in recent years should also emblazon upon our memories the understanding that even in seemingly hopeless circumstances, people can do great things to change their lives. As King told strikers in Memphis, "We can all get more together than we can apart...and this is the way we gain power." ■

WHY WE MUST RETHINK THE PARADIGM WE USE FOR JUDGING HUMAN ABILITY.

Not Just a Test

CLAUDE M. STEELE

In the summer of 1966 the Office of Education published the now famous "Coleman Report," which assessed the nation's progress in achieving the school integration mandated by the 1954 *Brown v. Board of Education* decision. The report was based on a survey conducted by the Educational Testing Service under the direction of sociologist James Coleman, and it included a brief test of cognitive skills. As reported in Nicholas Lemann's superb book on the history of ETS, *The Big Test*, these researchers hoped to find that the black-white gap in scores on this test would be smaller in the better-funded Northeastern schools than in the less-well-funded Southern schools. This would justify the use of federal funds to bolster underfunded public schools—an unprecedented policy at the time.



SEYMOUR CHWAST

What they found, however, was a black-white score gap virtually as large in better-funded schools as in poorly funded schools. The immediate reaction was dramatic. Coleman dropped the idea of federal support for under-funded public schools, apparently presuming that it wouldn't help much. The idea was later reinvigorated and passed into law as "Title I" funding for low-achieving, low-income schools. But this policy too seemed to lack a certain confidence. It targeted funds primarily at basic skills remediation, not at a broad, high-quality education for low-income students.

These events turned out to be a prophetic episode in a story that continues to this day. For perhaps the first time, the ETS survey revealed that the racial gap in test scores would be difficult to eliminate. But as important, the episode revealed a certain paradigm for using test scores in educational decision-making. With roots all the way back to the beginning of standardized testing in the early twentieth century, the paradigm is familiar: Based on tests taken early in life, lower-scoring people and groups get less educational attention, or more of a basic-skills education aimed at bringing them to minimal levels of competence, whereas higher-scoring people and groups get a richer education supported by more

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resources—better-trained teachers, more academically challenging curriculums, better opportunities, etc. The rationale for this "ability paradigm," as I will call it, has always been a kind of meritocratic efficiency: maximizing the return on society's investment by investing the most resources in those who, as indicated by test scores, have the ability needed to benefit from those resources.

But in the spirit of reflection occasioned by this anniversary of *Brown*, one might ask a difficult, two-part question: Has this paradigm all along been a major cause of the racial gap in test scores, and is it now, through this effect, a major remaining barrier to the full integration envisioned in *Brown*?

The paradigm has always involved a daunting set of assumptions: that there is a core intellectual ability; that there is a level of that ability that is indispensable to benefit from high-quality education; that the level of this ability that one has is fairly stable across the life span; that this ability can be accurately and reliably measured in people from virtually all backgrounds by a cognitive test in a single sitting at almost any time in a person's development; and that, therefore, scores from these tests can be used to triage students efficiently into ability-appropriate educational tracks early in life. When you look at it, this is a lot to believe in. But like most assumptions, these beliefs are more implicit than explicit. We endorse them largely by using the paradigm they support.

The use of tests to make educational decisions channels African-Americans into remedial education that sustains their lower scores.

Moreover, there are cultural frameworks that make these assumptions sensible to us. As the Lemann book describes, James Conant Bryant, the president of Harvard University from 1933 to 1953, endorsed this paradigm and spearheaded the broad use of the Scholastic Aptitude Test as a means of making admissions to Harvard more inclusive and less dependent on family connections that otherwise dominated admissions in his day. He believed the SAT could find people with academic talent in unlikely places. It was to be an instrument of meritocracy. And it has had a democratic effect. I have many distinguished colleagues who, because they scored well on standardized tests early in life, got academic opportunities they would never have enjoyed based on family resources or connections.

In the past several decades, and especially in the Bush years, there has also been an intensifying ideology of school accountability: holding schools and their financing accountable to test scores. This movement usually stresses achievement tests, covering specific curriculums, over ability tests like the SAT. (Achievement—more than ability, perhaps—might be thought of as improvable through better education. Thus an emphasis on achievement might be expected to direct better education to lower-scoring students in order to bring up their scores. But the ability ethos still seems to shape people's thinking about the kind of education that low-scoring students need.) These systems also divert high-quality resources and teachers away from low-scoring students in favor of remediation efforts, or efforts to enhance their test scores.

The sheer volume of students to be processed sustains the ability paradigm and its tests. The volume of applications to colleges, especially prestigious ones, has increased dramatically in recent years. Graduate and professional schools also confront large numbers of applications. And often grade averages and letters of recommendation do not discriminate well among applicants. In the context of this superheated competition, the hard number of a test score takes on more weight—even when it adds little information.

For these reasons, then, standardized tests have become a virtual truism in our society, the only means we can imagine for rationally meting out educational opportunity.

But what happens when this paradigm—especially its intensified use in the "standards" movement—meets the race gap in test scores that Coleman reported nearly forty years ago, and that every newspaper tells us persists to this day? The use of early-in-life test scores to make educational decisions, such as who gets into enriched reading groups and classes, who graduates from junior high school, who gets into college preparatory tracks in high school, who graduates from high school, etc., consistently channels African-Americans into a lower-grade education that sustains their lower test scores, alienates many of them from their education, contributes importantly to their high dropout rates and puts their lives on a course of restricted opportunity. When one looks upriver from the high dropout rates, the high incarceration rates, the high teenage-pregnancy rates and the high unemployment that disproportionately afflict African-American youth, one sees something systematic at work: an ability/testing paradigm that uses their early low scores to steer them (as well as many Latino and lower-income students more generally) into a low-expectation education as reliably as their parents and grandparents were steered into segregated schools. We have again set up two educational systems, and they are again separate but unequal.

Thus in assessing the nation's progress toward the integrated society envisioned in *Brown*, the remaining barriers may be not so much lawsuits against busing as a paradigm we use for thinking about human ability.

In writing the recent decision that upheld the University of Michigan Law School's use of affirmative action, Justice Sandra Day O'Connor said that the use of this policy in college admissions should end in twenty-five years. This is tantamount to saying that the race gap in test scores should end in twenty-five years. There is admirable optimism in this statement. But it is important to understand where the low test scores of African-Americans and other disenfranchised groups come from.

Consider, for example, what research shows about the experiences of African-Americans in school. They are more likely to go to poorly funded schools in run-down buildings, and more likely to be taught by uncertified and poorly trained teachers. Observational studies show that they often experience differential treatment even from well-intended teachers, such as being called on less in class and being invited less to special activities. They experience more corporal punishment and more frequent and longer suspensions from school for the same infractions as other students. They are more likely to be tracked into lower academic and special-education classes than other students. In junior high school and high school, they are likely to encounter an especially distract-

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ing peer group culture. They are counseled with lower expectations. They are more likely to go to schools with few or no Advanced Placement courses, and they are likely to have less access to test-prep courses and related tutorials. Much of this follows from their still living in substantially segregated communities with fewer resources. And much of this holds for middle-income African-Americans as well as for lower-income and working-class African-Americans. (Here it is important to stress that middle-income black families have 10 percent of the wealth of middle-income white families in the United States—reflecting differences in the intergenerational transfer of wealth and housing segregation's depression of black home values. And wealth plays a significant role in a family's educational decision-making.)

My own research and that of my colleagues reveals another identity-linked contextual pressure that affects especially the academic vanguard of African-American students: stereotype threat. Joshua Aronson and I first demonstrated the effect of this threat in a series of experiments conducted at Stanford University. One at a time, we gave academically strong black and white students a difficult section of the advanced Graduate Record Exam in literature. This situation alone, we reasoned, would be enough to put black students under a special pressure. For them, but not for white students, frustration on this test can confirm the negative stereotype about their group's lower intellectual ability—or at least raise the possibility that they might be seen that way. And because these are strong students who care about performing well, the prospect of confirming or being seen to confirm this stereotype could be upsetting and distracting enough to undermine their performance right there on the test. It did. Under this pressure—a pressure that is likely to be present for black students on the difficult sections of any important academic test, during academic performances more generally and even during interpersonal interactions in an academic context—black students performed worse than white students, even though we had statistically matched the two groups of students in skills.

Standardized tests are to school performance what free-throw shooting is to basketball—not unrelated, but a small part of the picture.

Yet consider what happened when we gave another set of black and white students the same exam. This time, we told them it was an instrument we used to study problem-solving but that it did not measure intellectual ability. This simple instruction changed the meaning of the testing situation for black students. No matter how they did on this test—defined this way—it would not reflect on their ability and thus could not confirm or disconfirm the negative stereotype about blacks. With the pressure off, black students' performance went up to match that of statistically matched white students. This tells us that what depressed their performance when they understood the test to be a normal test of intelligence was stereotype threat.

Taking a step backward, one can see that our social identities—like being African-American—have contingencies attached to them, specific things that a person with that identity has to cope with in specific settings. Black students face a particularly daunting set of identity contingencies in school—from having teachers with less training to being treated with low expectations to stereotype threat. This makes the experience of school different for them than for some other groups, even when they are in the same classroom, with the same teacher and with the same pictures on the wall.

As a cause of lower black test scores, these contingencies are bad enough. But the ability paradigm expands their effect. Treating their lower scores as if they were caused by low ability rather than by these contingencies, this paradigm puts African-American students on a track that insures they will not get the education they need to rise to the level of the other students. It seals the test-score gap in place.

But the wisdom of the ability paradigm and its use of early test scores would also seem to depend on how good its tests are. If they do a good job of measuring abilities that are indispensable to later school and life functioning, and if they can predict the level of that functioning well, then this paradigm could have considerable value, its flaws in relation to minority and low-income students notwithstanding. But if they measure a difficult-to-specify set of abilities and predict future performance only weakly, that would be another story.

In this regard, several features of standardized tests are worth keeping in mind. They are not designed to test some known, agreed-upon conception of intelligence. They are built bottom-up, by empirically identifying a set of items that predict school performance, not top-down, from some understood conception of what human intelligence is. When an item turns out to predict, we don't know exactly why. It could be measuring a critical cognitive ability, or it could be measuring something more incidental about a person that affects, for example, his or her cultural fit at the next level of schooling. Thus it is very difficult to know what abilities or skills ability tests test.

Nor do they predict particularly well. The SAT, for example, correlates .42 with freshman grades (it correlates considerably less well with subsequent grades and life outcomes). This means that it measures about 18 percent of the characteristics, whatever they are, that determine freshman grades. It also means that even large point differences on the test—say, 100 to 200 points—do not tell you much about underlying differences in skills, and have very little predictive value. As my colleague Jay Rosner and I have said before, standardized tests are to real school performance what free-throw shooting is to basketball playing—not unrelated, but capturing only a small set of relevant skills.

Most of the testing companies say all of this in their guidelines, much like the caveats that accompany drug advertisements on television. But our need for a system to allocate opportunity is such that, like people who need the advertised drug, we tend to ignore the caveats.

After a talk I gave recently, an African-American school administrator from a suburb of New York City cautioned me. He said the black-white test-score gap was the only leverage he had for focusing more of his district's resources on minority students. I could see his point. He had been living with inattention to these problems until news of the gap hit the local newspapers. But I have a larger fear: that whatever funds he wins to address this gap

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will be applied through the ability paradigm. Minority students will not be given a richer, more compelling education. They will likely be given a skills-focused, remedial education that will itself become a contingency of their identity, virtually guaranteeing the persistence of the race gap long beyond the Sandra Day O'Connor deadline. And the process of downwardly constituting them in this way will be understood not as a problem in the system of allocating educational opportunity but as a perhaps natural outgrowth of group differences in ability measured early in life.

In the years leading up to the *Brown* decision, the challenges to achieving an integrated society were legal. Today they are educational: to loosen the grip of the ability paradigm on the academic fate of African-American, Latino and poorer students. To this end, I hazard a few recommendations:

1. As much as possible, replace the word "ability" in our educational lexicon with words like "skill level" and "educational readiness." These terms say no more than we know, and thus keep us self-conscious about assuming more than we know.

2. When placements are made to accommodate lower skill levels, do not allow them to become life sentences. Provide clear curricular pathways to upward mobility and see to it that some students ascend that pathway as role models.

3. As much as possible, especially early in schooling, focus high-expectation, demanding and enriched schooling on lower-scoring students. Emphasize getting them to identify with and be excited about their schooling.

4. Discourage the use of ability and aptitude tests in favor of tests based on specific curriculums to which all students have access.

5. Develop and use multiple, low-stakes, cumulative, curriculum-based assessments rather than single-sitting, high-stakes tests—including for use in college, graduate school and professional school admissions.

6. Develop and use additional metrics for such signs of student readiness as motivation and desire, breadth of life experience, degree of experience in the relevant domain, work discipline, maturity, etc.

7. Much of the current test-score gap comes from high-scoring students' use of supplementary education tutoring, after-school and weekend programs, test-prep courses, etc. Coalitions of school, church, community and civil rights organizations should develop and extend these "shadow" educational resources to minority and low-income communities—extending Head Start programs into supplementary school programs that serve older children, for example.

Major changes in society and in organizations happen when everyone starts working on the same thing. Then things tip. This was true of the *Brown* decision itself. It finally happened when lawyers, social scientists, judges and educators all came together to make it happen. To get rid of test-score gaps, the same coming together is necessary. So in this year of commemorating *Brown*, let us remember the resolve that brought it about. ■

ADVOCATES ARE DEMANDING NOT JUST EQUAL BUT DECENT SCHOOLS FOR ALL CHILDREN.

What's Good Enough?

PETER SCHRAG

By now the list of a half-century of half-tried and discarded educational remedies seeking to honor the promise of *Brown v. Board of Education* fills volumes: attendance-zone redistricting, busing, magnet schools, compensatory education, bilingual education, ebonics, military schools, year-round schools, single-sex schools, Head Start and multiculturalism, plus scores of other curricular reforms. While gaps between the academic achievement of white and minority children were reduced in the first decades after the end of legal segregation, they were never eliminated. By almost any educational measure, the average black or Latino child continues to lag behind her white or Asian counterpart. In 1973, with its decision in *San Antonio v. Rodriguez* that public schooling was not a right guaranteed under the Constitution, the Supreme Court itself effectively gave up its cause.

SEYMOUR CHWAST

That threw the issue back to the states, where it has remained ever since, but where, in an accumulation of crucial state Supreme Court decisions and associated legislative reforms, the drive for decent schools for poor and minority children has taken a new, unexpected—and perhaps encouraging—set of turns.

At the heart of those cases is the principle of adequacy, a legal idea, rooted in variously worded state constitutional provisions, that's as promising as it is awkward. Many state constitutions require the state to maintain "thorough and efficient" schools or (as in New York) "free common schools wherein all the children of this state may be educated," or (as in North Carolina) to establish the "right to the privilege of education."

Most such provisions have been in state constitutions for generations. But in the past fifteen years, as state after state has adopted tougher academic standards, tests and accountability measures, those standards have become both the drivers and the gauge for new demands from parents, school districts, civil rights groups and others for better resources, especially in schools

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serving the neediest kids: If students are required to meet higher standards for promotion, or to pass exit exams to get a diploma, or if teachers or principals face sanctions if their schools don't measure up, the state has a commensurate responsibility to provide the resources—in trained teachers, materials and facilities—to enable them to succeed. In this way, advocates of educational equity have attempted to turn the "standards" movement—which has been championed by conservatives—into a lever for progressive change.

The list of states where this is happening continues to grow: Arkansas, Kansas, Kentucky, Massachusetts, Montana, New Jersey, New York, North Carolina, Ohio and Wyoming, among others. The courts have ordered these states to establish systems that base school funding not on the customary political sausage machine that allocates money according to local wealth and the relative clout of competing legislative interest groups but on the closest possible determination of what it actually costs to educate each child. In some of them the judges have ordered even more specific remedies—preschool for at-risk children, for example, or wholesale curricular reforms.

In others, like California, major lawsuits are still pending. Former Governor Gray Davis, a Democrat, hired high-priced corporate lawyers to fight a California suit first brought by the American Civil Liberties Union along with other civil rights groups. The state argued, among other things, that lousy schools weren't its responsibility. After the state spent some $18 million on its lawyers, Davis's Republican successor, Arnold Schwarzenegger, is now trying to negotiate a settlement.

With the No Child Left Behind Act, the Bush Administration perhaps unwittingly gave the 'adequacy' movement additional steam.

The most influential model for the adequacy cases has been Kentucky, which until the late 1980s had one of the most underfunded, inequitable and often corrupt school systems in the nation. In a sweeping 1989 decision (*Rose v. Council for Better Education*) the Kentucky Supreme Court struck down that whole system—"all its parts and parcels"—as a violation of the state Constitution and ordered the legislature to start over. Among the standards the court set was a requirement that Kentucky provide every child with seven "capacities"—oral and written communication skills, "sufficient knowledge of economic, social, and political systems to enable the student to make informed choices...sufficient training...in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently," plus several others. Within a year, the state legislature, with the support of a business community that badly needed a better-educated labor force, enacted a major education reform law, complete with significant new funding, tougher academic standards, a new testing program and other measures.

The reforms hardly produced miracles, but they quickly improved teacher salaries and qualifications, improved facilities and produced substantially better scores on national tests, where Kentucky moved from near-bottom to roughly average. In the years since, and particularly because of tight budgets brought by the recession that began in 2000, Kentucky's school funding, like that of many other states, has eroded, and now new negotiations as well as another suit based on the state's alleged failure to maintain adequate resources are under way. Still, the *Rose* case testifies more to the success of the principle than its failure.

Defining adequacy is hardly a simple process. Resources that are adequate for middle-class kids may not be adequate for those coming to school speaking little English or those who are educationally handicapped. Nor is it clear what level of schooling the respective state constitutions require. In a New York State case last year, a lower appellate court decreed that an eighth-grade education was enough. But the Court of Appeals, New York State's highest court, rejected that crimped standard. It would require a great deal more, the court effectively held, for a person to become a fully functioning citizen and member of contemporary society.

With the enactment in 2002 of the No Child Left Behind Act, President Bush's school accountability law and his prime claim to "compassionate" conservatism, the Administration has perhaps unwittingly given the adequacy movement additional steam. In the past year a number of states have considered rejecting a major chunk of federal funds in the belief that NCLB represents unfunded mandates, and thus costs them more than they were getting from the Feds. Districts in Nebraska, Missouri and North Dakota filed adequacy suits against their states, complaining that NCLB, in combination with state tests and proficiency standards, was asking them to achieve levels of proficiency beyond the resources provided. The threat of such suits has also added steam to the spreading political backlash against NCLB, even in legislatures dominated by Republicans.

Perhaps the most significant thing about the adequacy argument is that it goes beyond the simple equity principles—essentially, equal funding for every child—that have been a prime legacy of *Brown*. The remedy sought in *Rodriguez*, a remedy ordered by a number of state courts in the 1970s and '80s, was for states to provide enough money to low-property-value districts—districts that didn't have enough resources of their own—so that each child in the state had roughly the same funding behind her as all other children. But what seemed equitable in theory often wasn't equitable in practice. Many poor children went to school in the ghettos and barrios of property-wealthy districts, where their schools were still run-down, the roofs leaked, the rats played, the books were out of date and sometimes not available at all, and their teachers were disproportionately underqualified. Many of those teachers doubted that their students could ever achieve real academic proficiency.

In states like California, moreover, which had been a model for the equity-funding cases of the 1970s, the ultimate outcome of a pair of state Supreme Court decisions ordering the state to equalize per-pupil spending, combined with the tax-cutting mandated by Proposition 13 (1978), was to equalize school funding *down*. Which is to say that nominal equity brought not better schooling for children but worse. Given the structure of the American federal system, moreover, no court has the authority to equalize spending among states. New York and New Jersey, for example, now spend more than half again as much per child as California and twice as much as Utah.

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Most important, the pro forma equity ordered by courts like California's did not in fact equalize resources—even between schools in the same district—much less provide resources that gave poor children a shot at a decent education. Studies in Seattle, Cincinnati and Houston conducted by a group of University of Washington researchers have shown that because the most capable and experienced (and thus the highest paid) teachers cluster in schools with better conditions, real per-pupil spending in different schools within the same district ranged between as little as $4,000 per child and as much as $10,000 per child, with the gap almost always disfavoring the schools serving poor and minority children.

Economists and educational experts disagree about how much sheer money matters. While Washington, DC, for example, spends more than almost any other large urban district, its student achievement levels are among the poorest in the nation. And, as many conservatives contend, some low-wealth districts that allocate resources effectively do better than high-wealth districts that don't. Nonetheless, in most places the strong correlation between the poverty levels of students, the paucity of decent resources they get in the classroom and their low achievement is reflected in almost every measure of school quality there is: student test scores and graduation rates, the test scores and college rankings of the teachers, the crowding and physical condition of the schools, the availability of books and materials, class size and all the rest. A study done in New York State by Hamilton Lankford, an economist at the State University of New York at Albany, showed an almost perfect correlation between the percentage of teachers who had failed certain standard state teachers' exams at least once and the concentration of poor children in the schools where they taught. The poorest kids, in other words, tend to get the least-experienced and least-qualified teachers.

What is adequacy anyway, and who determines it? Can the courts accomplish real reform without public and political support?

For the most part, and despite concerns about local control and the limits of judicial authority under constitutional separation of powers, the courts have accepted the adequacy arguments, even inviting them in states where they rejected the equity cases. Writing the adequacy formulas—some based on what "successful" schools spend, some on the judgment of education professionals—is hardly an exact science. But it's almost certainly more precise than conventional interest-group politics and back-room deals (as in New York, where it was "three men in a room in a room," the governor and the leaders of the Assembly and Senate). And as Michael Rebell, who heads the Campaign for Fiscal Equity in New York, points out, it gets beyond the zero-sum (and often self-defeating) equity argument under which additional money for poor schools comes from schools attended by more affluent kids. This has happened not only in California but in Texas, where an equity-based court decision led to a state rule ordering wealthy districts to share funds with low-wealth districts.

The political response to the adequacy decisions has varied according to the politics of the respective states. In New Jersey a series of court decisions spanning more than twenty years (all designated *Abbott v. Burke*) have slowly succeeded in getting the state to fund its biggest urban districts at the same level as the highest-funded suburban schools—though so far with unclear results in student achievement. While major reforms—preschools, curricular changes, smaller classes—have been instituted in Newark, Camden, Jersey City and the almost thirty other urban "Abbott" districts, many of which now spend some $15,000 per child, far more than the national average, test scores have yet to show commensurate results.

Conversely, in Ohio, legislators asserting their authority as a co-equal branch of government have largely ignored the state Supreme Court's orders. In Alabama, where a series of court decisions ordered the state to revise its blatantly inadequate school-funding formula, the Supreme Court, after a set of judicial elections that radically changed the balance of the court, made a 180-degree turn and, on its own motion, decreed that the courts had no authority to meddle in school finance—only the legislature could do that.

The future of those cases—indeed, of the whole adequacy principle—remains unsettled. What is adequacy anyway, and who determines it? Is it an eighth-grade education, as the one New York court ruled? Is it high school graduation? Is it admission to college? Can the courts ever accomplish real reform without public (and thus political) willingness to provide decent resources to all children? How much are affluent taxpayers willing to spend for poor, minority and immigrant kids? What difference does money make, and if it makes a major difference, how should it be spent?

Yet some things are clear. Even conservative economists like Eric Hanushek of Stanford's Hoover Institution agree that good teachers make a critical difference in enabling poor and minority children to overcome the economic and cultural disadvantages they come to school with. That means creating the conditions that will attract and keep good teachers in the classrooms that most need them. It also means writing "weighted student formulas" that provide the additional resources essential for English-language learners, children from poor homes and learning-disabled students.

Notwithstanding its many flaws, NCLB has reinforced the push for adequate resources. From the start, its prime intent was to force schools that received federal Title I money—the biggest part of the Feds' K–12 funding—to improve the education of the poor kids it was designed for. For many states that had largely written off black and Latino kids, and that under NCLB are now being rated not just on average student achievement but on that of all major economic and ethnic subgroups, this was an enormous change. It began to address at least part of the great issue that *Brown* raised and *Rodriguez* effectively abandoned.

NCLB, written and passed with the strong support of congressional liberals like Edward Kennedy and George Miller, also linked funding to accountability as no other federal program had ever done. That the Administration is now funding it at some $9 billion a year less than it had promised, and that its enforcement of the NCLB provision requiring districts to have a "highly qualified" teacher in every classroom borders on the farcical, doesn't vitiate the link.

By the same token, the Administration's failures may well

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jeopardize the noble objective that the bill proclaimed. For if accountability and high standards can leverage funding up, so can the lack of funding allow standards to slip. It would not be all that hard for states and districts to return to the convenient rationale, common in the post-*Brown* decades, that poor and minority kids and immigrant Latinos who come to school speaking little English are so disadvantaged that it would be unjust—and, in any case, futile—to ask them to achieve at a high level. Bush, in one of his few memorable phrases, called it "the soft bigotry of low expectations."

A few weeks ago, a researcher for a PBS program on the *Brown* anniversary called to ask where she could find latter-day examples of tracking—the practice of moving poor and minority kids into unchallenging, dead-end programs. Those practices may be less blatant today, but they are still with us. And as Harvard's Gary Orfield points out, US schools are now as segregated as they were thirty years ago—in the case of Latinos, more segregated than ever. But all over America, the biggest form of tracking and segregation these days is not the old system, where some kids are automatically enrolled in relatively demanding college-prep programs while others are consigned to shop and business math, but the massive de facto tracking of black, Latino and other poor kids into schools that don't begin to have the qualified teachers, textbooks, counselors, lab equipment, clean and safe spaces, working toilets and vermin-free classrooms that honor their work and that of their teachers, and that make them want to succeed. Desegregating schools can't alleviate that problem, because housing patterns, white flight and sheer politics make it difficult to find anyone with whom to integrate. The only remedy is to make the schools serving poor kids vastly better.

Although it's now almost a cliché, it's truer than ever that education is the biggest—and maybe the ultimate—frontier in the battle for civil rights. *Brown* (and, to a slightly lesser degree, the civil rights acts of the Johnson era) contributed mightily to the progress that's been made in that battle over the past half-century. But it is hardly finished. For all its flaws, adequacy may be the most promising legal strategy to move it to the next stage. ■

LETTERS
CONTINUED

(Continued From Page 2)

The work of federal scientists, often afraid to speak out, is being subverted, manipulated and pushed aside. Four more years of this and all the West's scientists, and residents, will be up a creek. Please visit www.hcn.org/specialcollections/junkscience.jsp. LAURA L. PASKUS

THE PASSION OF LENI

Melrose Park, Pa.

■ Katha Pollitt calls *The Passion of the Christ* "a movie that could safely be shown at the Leni Riefenstahl Memorial Film Festival" ["Subject to Debate," March 29]. Funny she should mention Hitler's filmmaker. At the peak of the controversy, Riefenstahl was included in the Academy Awards ceremony's annual tribute to recently deceased film industry figures alongside Gregory Peck, Bob Hope, John Ritter and others the public recalls with fondness. Filmmaker Arnold Schwartzman has noted, "Riefenstahl was probably the best propaganda tool that Hitler had, and a lot of the terrible things that happened were as a consequence of what she did.... She used her skills to rouse the German people into going along with Hitler." Although Riefenstahl later claimed she did not support the Nazis, when Hitler conquered Paris in 1940 she sent him a telegram saying: "Your deeds exceed the power of human imagination. They are without equal in the history of mankind. How can we [the German people] ever thank you?"

The applause from the audience did diminish at the mention of Riefenstahl's name. But one would have hoped that others in the film industry had spoken out and that the Academy of Motion Picture Arts and Sciences had expressed some remorse. DR. RAFAEL MEDOFF
The David S. Wyman Institute For Holocaust Studies

GOP GANG STRIKES BY NIGHT

Springfield, Va.

■ I am astonished at what Wayne S. Smith reports in "Undemocratic Process" [March 15]. How could "a small group of leading Republicans" alter legislation that had been passed by both houses of Congress by removing a duly enacted amendment? This is indeed a desecration of the democratic process, but it also must be illegal. The Treasury-Transportation appropriations bill signed by the President was not the legislation enacted by Congress. How could it become law? Isn't this subject to legal action? Can't the General Accounting Office look into this? Who was in this gang of "leading Republicans"? Why hasn't anyone objected? I am astonished. NELSON T. HENDERSON

SMITH REPLIES

Washington, DC

■ I can only say that yes, the amendment was removed, ignoring the will of the majority and established procedural rules and the will of the majority. No Republican has admitted to being part of the cabal that removed it virtually in the dead of night. But it was not technically illegal. The real question is, how did the amendment's supporters allow its removal without a fight? No one said, "You can't do this."

Why didn't they? WAYNE S. SMITH

WHALING THE WALL

Bradford, Vt.

■ No doubt Hillel Schenker, in "Israel's Failing Wall" [March 8], is right when he says that Ariel Sharon opposed a wall along the Green Line, but readers should not imagine that the Prime Minister's enthusiasm for a wall inside the West Bank is recent. In an article in *Yediot Aharonot* (May 23, 2003), Ron Nahman, mayor of the Ariel settlement, said, "The map of the fence, the sketch of which you see here, is the same map I saw during every visit Arik made here since 1978. He told me he has been thinking about it since 1973." To realize such an audacious dream, Sharon needed the alignment of two key elements: his own rise to unchallenged power in Israel, and a supine US administration.
BERT DODSON

WORKING HARD TO BE HOMELESS

Austin, Tex.

■ Beth Shulman's "Working and Poor in the USA" [Feb. 9] plainly depicts how poverty wages are attacking the very base of our socioeconomic structure. Of the 30 million impoverished workers she describes, 10 million are minimum-wage workers, and it is from this pool that 3.5 million people will experience homelessness this year. Meanwhile Congress can't fix the federal minimum wage because it can't select a single wage amount, like $8.70/hour, as suggested by Shulman. Workers in almost every big city would not be able to afford housing on that wage, but it would destroy small businesses in cities like Harlingen, Texas, or Duluth, Minnesota.

We agree that the minimum wage should be indexed to inflation, and it's the inflationary cost of housing that's making homeless people out of full-time workers. We've devised a national formula, indexed to the local cost of housing, that uses government guidelines and insures that anyone working a forty-hour week will at least be able to eat, be clothed and afford basic rental housing (see www.universallivingwage.org).
RICHARD R. TROXELL
Universal Living Wage

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BOOKS & THE ARTS

Why *Brown* Still Matters

DAVID J. GARROW

SIMPLE JUSTICE: The History of Brown v. Board of Education and Black America's Struggle for Equality.
By Richard Kluger.
Knopf. 865 pp. $45.

MAKING CIVIL RIGHTS LAW: Thurgood Marshall and the Supreme Court, 1936–1961.
By Mark Tushnet.
Oxford. 399 pp. Paper $30.

Fifty years ago, African-Americans and fellow progressives hailed *Brown v. Board of Education* as a conclusive turning point in the struggle for racial equality. NAACP chief counsel Thurgood Marshall predicted the end of all school segregation within five years, and the NAACP adopted the slogan "free by '63." White supremacists unsurprisingly denounced the decision, but prominent academics and jurists also criticized *Brown* for rejecting history, endorsing social psychology and espousing judicial supremacy.

Fifty years after *Brown*, the battle lines are reversed. Prominent African-American figures now criticize *Brown* as a "failure," and liberal legal scholars claim the ruling contributed little or nothing to the black freedom struggle of the 1950s and '60s. Conservative commentators and judges, for their part, now avidly praise *Brown*, celebrating it as a landmark victory that paved the way to a "colorblind" America.

This paradoxical turnabout is not a singular phenomenon. Consider, for example, how each January the Martin Luther King Jr. federal holiday now elicits a largely ho-hum response from proponents of racial justice. In contrast, right-wing politicians like President George W. Bush consistently use the anniversary for wreath-laying photo-ops designed to advertise their anti-racist credentials.

David J. Garrow is the author of Bearing the Cross *(Morrow), a Pulitzer Prize–winning biography of Martin Luther King Jr., and* Liberty and Sexuality *(California), a history of America's reproductive rights struggle.*

Should conservatives be blamed for trying to appropriate the *Brown* decision and the King holiday as deceptive window-dressing for their own present-day political goals? Or should liberals instead ask whether onetime supporters of *Brown* and of King have so loosened their own embrace of two of the freedom struggle's greatest legacies as to make them easily available for uncontested capture by their opponents?

Failure to extol the democratic socialist King, who harshly decried America's military adventurism abroad, leaves him vulnerable to the sort of selective quotation ("not be judged by the color of their skin but by the content of their character") that allows conservatives to kidnap his birthday. Fortunately with King, there are excellent new books, such as Drew Hansen's *The Dream* and Stewart Burns's *To the Mountaintop*, as well as earlier biographies, that utterly rebut this historical hijacking.

Fashionable dismissals of Brown, *like the belittling of Martin Luther King Jr. by radicals, can have harmful political effects.*

Brown has not been as fortunate. Most of the long shelfload of books published on the occasion of the decision's fiftieth anniversary focus on the narrowest aspect of *Brown*'s legacy—school desegregation—and overlook the broader and more far-reaching way in which *Brown* revolutionized the role of courts in American life. Some of these books offer fashionable dismissals of *Brown*, which, like the belittling of King by radicals, can have tangibly harmful consequences in the wider political culture. For if *Brown* was a "failure," then aggressive judicial protection of civil rights and liberties in other contexts is likewise more open to disparagement and attack.

The books that examine *Brown*'s racial legacy range from *All Deliberate Speed*, a hybrid of historical criticism and memoir

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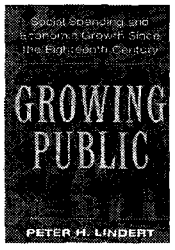

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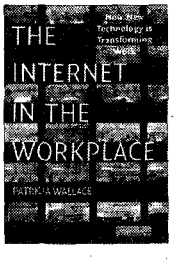

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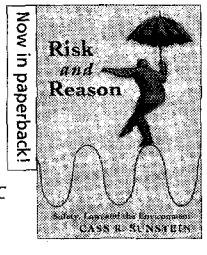

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by Harvard law professor Charles Ogletree, to Charles Clotfelter's *After Brown: The Rise and Retreat of School Desegregation*, a richly instructive "arithmetical history" of how educational integration waxed and then waned in the years after *Brown*. Supreme Court history aficionados will enjoy *With All Deliberate Speed* (edited by Norman Silber); while its subtitle, *The Life of Philip Elman: An Oral History Memoir*, may sound obscure, it provides a fascinating insider's look at the Supreme Court during the 1940s and '50s.

Derrick Bell's *Silent Covenants* is the most disconsolate new volume, revisiting criticisms of civil rights litigation that Bell—an NAACP Legal Defense Fund attorney in the 1960s, now a law professor at New York University—has been articulating for more than two decades. Bell believes that he and other lawyers failed to realize that "racism is permanent in this country," and that excessive faith in integrationist ideals has actually harmed black students' education. A far more optimistic prescription for America's racial future is offered by Sheryll Cashin, a Georgetown University law professor who clerked for Thurgood Marshall during his final year on the Supreme Court, in *The Failures of Integration: How Race and Class Are Undermining the American Dream*. Cashin's title captures the current media consensus that *Brown*'s legacy for America's public schools has been one of failure rather than success. But unlike Bell, Cashin lays out an integrationist vision fully in keeping with Marshall's own 1954 confidence. She may be outnumbered by those who see *Brown* as a misguided venture that actually disserved African-Americans, but progressives should think twice before accepting such a negative conclusion about a decision so long and so popularly associated with judicial advancement of civil rights.

None of these new books offer a comprehensive history of *Brown* itself. For that, one must turn to Richard Kluger's *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*, first published in 1976, or to Mark Tushnet's very different but valuable *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961*, published in 1994. Kluger's exhaustively documented chronicle remains the richest book yet written about *Brown* and one of the finest works of history ever to appear. The Pulitzer Prize board's failure to honor it is, in retrospect, a glaring embarrassment (Kluger did receive a 1997 Pulitzer for *Ashes to Ashes*, a magisterial history of the public health battle over cigarettes). Publication of a new edition of *Simple Justice* this spring offers a renewed opportunity to absorb one of the essential stories of American history.

Kluger's beautifully written volume begins with a memorable account of *Brown*'s origins in Clarendon County, South Carolina. *Brown*, the singular name for the Supreme Court ruling, actually encompassed four initially separate cases—from South Carolina, Virginia, Delaware and Kansas, the last of which furnished the "Brown" moniker. A fifth case, from the District of Columbia, *Bolling v. Sharpe*, was simultaneously decided in an individual opinion.

Simple Justice moves back and forth among the grassroots origins and lower-court litigation of all five cases. The South Carolina lawsuit is a riveting story because of the white repression and retaliation the African-American plaintiffs suffered. Kluger's elegant narration supplies copious detail about each case, but the most historically significant moment in the lower-court trials took place in *Brown* itself on June 25, 1951, during the testimony of Louisa Pinkham Holt, a psychology professor at the University of Kansas.

Addressing segregation's impact on black schoolchildren, Professor Holt testified that "the fact that it is enforced, that it is legal, I think, has more importance than the mere fact of segregation by itself does because this gives legal and official sanction to a policy which is inevitably interpreted both by white people and by Negroes as denoting the inferiority of the Negro." The resulting "sense of inferiority must always affect one's motivation for learning," she added, "since it affects the feeling one has of one's self as a person."

Five weeks later the court ruled against the black plaintiffs. But Judge Walter Huxman's opinion included a finding of fact that recapitulated Louisa Holt's testimony: "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn." As *Brown* moved forward to the Supreme Court, Huxman's echoing of Holt would tellingly reverberate.

Kluger's powerfully rendered accounts of such preliminary events convey a sense

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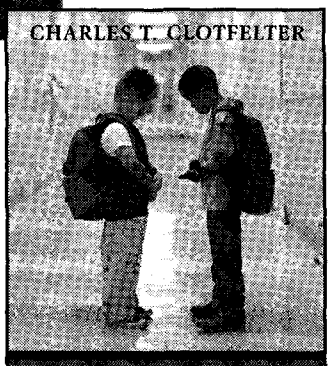
of high drama and uncertainty about the cases' eventual outcome. *Making Civil Rights Law* tells a different story. In Tushnet's view, only modest drama marked the Supreme Court's handling of *Brown*. When the High Court first heard the five cases in late 1952, the nine Justices already knew they were going to overrule *Plessy v. Ferguson*, the infamous 1896 "separate but equal" ruling that had enshrined racial segregation in American law. Kluger, in contrast, portrays the NAACP attorneys as advancing a precarious challenge to *Plessy* whose final resolution was unforeseeable.

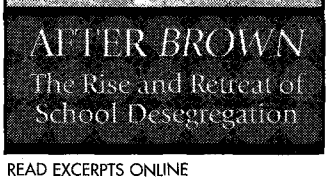
The crucial turning point, in Kluger's view, occurred on September 8, 1953, when Chief Justice Fred Vinson died suddenly of a heart attack. Vinson's demise, Justice Felix Frankfurter told his close friend Philip Elman, represented "the first indication I have ever had that there is a God." Earl Warren, the Republican governor of California, was named as Vinson's successor, an appointment *Simple Justice* heralds as the "Arrival of the Superchief."

Judicial serendipity thus seems crucial to *Brown*'s outcome. As the Court moves forward toward its May 17, 1954, decision of *Brown*, Kluger's focus on the nine Justices, and especially on Earl Warren, intensifies. *Simple Justice* presents *Brown* as the fortuitous achievement of the right man who was in the right place at the right time. Indeed, in Kluger's account, the Justices are the decisive actors, while in Tushnet's account the plaintiffs' attorneys, particularly Marshall, are crucial. As Tushnet puts it, "It was precisely the brilliance of Marshall's strategy that he forced the justices to a choice" concerning *Plessy*, "believing—correctly, as it turned out—that once he forced them to choose, they could make only one decision." The suggestion that there was "only one" possible outcome in *Brown* is utterly foreign to the historical tension that *Simple Justice* so persuasively portrays. For Kluger, not only was *Brown*'s outcome in doubt until after Warren's arrival as Chief Justice but uncertainty continued right up to the very drafting of the decision, as Warren worked to persuade all of his colleagues to join in one unanimous opinion. For Tushnet, *Brown*'s outcome was never in doubt; only the Justices' modest differences "over how to justify the result" they knew they were going to reach were really at issue.

In Tushnet's view, the crucial issue that preoccupied the Justices from late 1952 to

"Clotfelter shows clearly how and why the decision in Brown has had such a painful and tortuous history.... This is must reading for anyone who wishes to follow the history of public education during the last half-century."
—John Hope Franklin





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1954 was not *Brown*'s constitutional merits but how a decision overturning *Plessy* could avoid imminent enforcement of school desegregation in the South. That primary concern led the Justices to order yet another round of reargument, rather than issue an immediate remedial mandate, when *Brown* "I" was handed down. Twelve months later, in *Brown* "II," the Justices sent all five cases back to the lower courts in a brief opinion that did not mention "segregation," "desegregation" or "integration." *Brown* II reiterated that "racial discrimination in public education is unconstitutional," but it instructed the lower courts only "to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

"All deliberate speed" has become a deservedly notorious phrase, but criticism of that phrase diverts attention from the *Brown* Court's far more fundamental failure to articulate, or even think through, what the future of nondiscriminatory public education in previously segregated schools should entail. The Supreme Court's silence on that crucial point was a fatal error, for when the Clarendon County case returned to South Carolina, Circuit Judge John Parker shrewdly filled the gaping hole. Under *Brown*, Parker said, "a state may not deny to any person on account of race the right to attend any school that it maintains." However, so long as schools are "open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools." Pursuant to *Brown*, Parker explained, the Constitution "does not require integration. It merely forbids discrimination" and "forbids the use of governmental power to enforce segregation."

Tushnet notes that the lower federal courts "universally adopted" Parker's formulation, and his distinctions, in Kluger's words, "set a standard for evasiveness" for school districts across the South. Thanks to the Supreme Court's blindness, and Parker's assertiveness, "after *Brown*, the ultimate issue of principle was the meaning of *Brown* itself," as Tushnet aptly puts it. Whether or not the Constitution required "some substantial degree of integration" on the part of previously segregated school districts was a question that the *Brown* Court had failed to answer or even consider.

The *Brown* Court's fundamental failure to articulate an affirmative standard for public education's postsegregationist future was as momentous a judicial mistake as any that the post–New Deal Court has ever made. It opened the door to Judge Parker's wily artifice, and the Court's post-1955 evasion of most, though not all, of the ensuing decade's most pressing desegregation cases allowed the Parker formulation to hold sway largely unchallenged for more than ten years.

Only in 1968, thirteen years after *Brown* II, did the Supreme Court finally return in a definitive fashion to the unanswered questions about Southern school desegregation it had forsaken in 1955. The Court's virtual abandonment of *Brown*'s meaning during those intervening years allowed the white South to evade any implementation of meaningful change for well over a decade. Indeed, it was only after Circuit Judge John Minor Wisdom of Louisiana declared that Parker's formulation was "inconsistent" with *Brown* II's unspoken mandate that districts "provide an integrated school system" that the Supreme Court embraced Wisdom's response to the crucial question that *Brown* had failed to address clearly.

Over the past decade it has become fashionable in some academic circles to assert that *Brown v. Board of Education* was a decision of little moment, that the Southern black freedom struggle of the 1954–68 era would have developed in much the way that it did irrespective of whether *Brown* or any similar ruling was ever handed down by the Supreme Court. Michael Klarman, a law professor at the University of Virginia, first propounded that argument in 1994, and this year he elaborates at some length a slightly muted restatement of it in *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*.

Klarman is not alone in asserting that *Brown* mobilized white segregationists to oppose African-American efforts for equality with radically increased vigor. But many recountings of mid-1950s history wrongly see white "massive resistance" as a direct response to *Brown*. Instead, as the best civil rights histories richly detail—see, for example, J. Mills Thornton's *Dividing Lines—Brown* inspired African-American activists across the South to redouble their efforts. Only as black Southerners petitioned for school integration, boycotted segregated municipal buses and attempted to desegregate all-white public universities did hard-core segregationists rise up in hysterical fury.

Academic efforts to minimize *Brown*'s importance to the Southern black freedom struggle are not new—Gerald Rosenberg's 1991 book *The Hollow Hope: Can Courts Bring About Social Change?* is a case in point—but such historical arguments increasingly go hand in hand with political claims that progressive social-change movements should not look to constitutional lawsuits like *Brown* (or *Roe v. Wade*) to advance their agendas. For many Americans, *Brown* represents the social truth that courts can right fundamental wrongs just as much as it represents a landmark moment in the struggle for racial justice. Even as recently as 1987, when Judge Robert Bork's nomination to the Supreme Court was overwhelmingly rejected by the Senate, criticisms and dismissals of the Warren Court's legacy of constitutional change were voiced only by conservative Republicans, and *The New Republic*, not progressives.

The new left-liberal hostility toward judicial power was exemplified by Mark Tushnet's *Taking the Constitution Away From the Courts*, published in 1999. Tushnet advocated that rather than invest in constitutional litigation, progressives "ought to participate in creating constitutional law through our actions in politics." Tushnet's call unfortunately echoed the longtime editorial rhetoric of *The New Republic*, whose disdain for judicial protection of constitutional liberties culminated in the bizarre assertion that women's access to legal abortion was "a right that should be protected by politics," not the judiciary.

When prominent progressive scholars such as Tushnet join with *The New Republic* in calling for constitutional self-abnegation on the part of the federal judiciary, they embrace the legacies of Felix Frankfurter, Learned Hand and Robert Bork, not those of Earl Warren, William Brennan and Thurgood Marshall. To the extent that this position is animated by historically erroneous dismissals of *Brown*—and by similarly wrongheaded claims that the abortion rights movement would have fared better had the Supreme Court not handed down so strong a ruling as *Roe v. Wade* in 1973—forceful rebuttals of Klarman's historical distortions are imperative. As liberal law professor Erwin Chemerinsky has emphasized, "The erosion of faith in judicial review may cause courts to be less willing to enforce the Constitution."

The danger that an academic fad can have deleterious real-world consequences is starkly evident in Judge Richard Posner's off-the-bench observation in *The New Republic* that "the swelling chorus of 'judicial review' skeptics" has "undermined the complacent belief that judicial review is unequivocally a good thing." Perhaps

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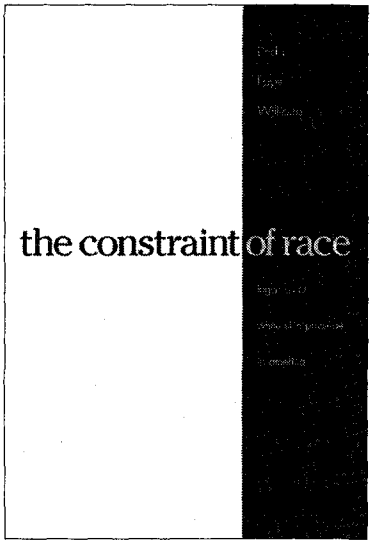

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progressives will be tempted to endorse Posner's conclusion, rather than Chemerinsky's warning, when they reflect upon the recent track record of the Rehnquist Court, but that temptation should be resisted and indeed rejected. Landmark decisions in the 1990s, such as *Planned Parenthood v. Casey*, *Romer v. Evans* and *US v. Virginia* (the VMI sex-discrimination case), all reflect how even a highly conservative Court sometimes can insure and advance individual rights. Indeed, anyone tempted to dismiss the political utility of progressive civil liberties litigation in today's federal courts should recall the Rehnquist Court's historic June 2003 vindication of gay Americans' basic personal liberties in its remarkable 6-to-3 ruling in *Lawrence v. Texas*.

Brown's legacy as our ultimate beacon of judicial protection of fundamental rights will resonate even more vibrantly this May 17. Last November the Massachusetts Supreme Judicial Court, building directly upon *Lawrence*, held in *Goodridge v. Department of Public Health* that the state Constitution does not allow for the institution of civil marriage to be discriminatorily restricted to opposite-sex couples. *Goodridge* is the climax of a state constitutional litigation strategy for gay marriage equality that reaches back to the early 1990s and bears more than a passing resemblance to the constitutional vision that animated Thurgood Marshall in the years before *Brown*.

When the Massachusetts court issued *Goodridge* on November 18, it delayed implementation of its order for 180 days. The past few months have witnessed sad, pathetic and ultimately unsuccessful efforts by Massachusetts Governor Mitt Romney to obstruct and postpone the court's ruling. The 180-day period expires on May 17, the day on which same-sex couples will first be eligible to obtain state marriage licenses. It is a fitting tribute to *Brown*, and to the courageous lawyers and Justices who demonstrated that constitutional litigation can indeed enhance human freedom, that *Brown*'s fiftieth anniversary will be celebrated by the advent of another historic advance toward complete liberty and equality for all. ■

No Success Like Failure

JON WIENER

EUGENE McCARTHY: The Rise and Fall of Postwar American Liberalism.
By Dominic Sandbrook. Knopf. 397 pp. $25.95.

Eugene McCarthy has always been a mysterious and frustrating figure. Nothing he did before 1968 hinted that he would become the liberals' antiwar leader and challenge an incumbent Democratic President; nothing he did after 1968 accomplished much of anything. Dominic Sandbrook skillfully conveys the events and the experience as well as the arguments of that year. Although he is a Shropshire lad born in 1974, Sandbrook argues like my father, born in Duluth in 1921 and a good Minnesota Democrat: He insists we focus on how the story of 1968 ended. The split among Democrats led by McCarthy ended up with Nixon in the White House. Nixon kept the war going for another five years, during which 15,000 more Americans were killed, and—we might add—during which Americans killed something like a million more Vietnamese, Cambodians and Laotians.

If '68 ended badly, it began with "a triumph of heroic magnitude"—*Newsweek*'s description of McCarthy's showing in the New Hampshire primary that February. The senator from Minnesota had been the only one willing to challenge Lyndon Johnson, to make Vietnam the issue in the upcoming presidential election. Although McCarthy didn't win the popular vote—he got 42 percent in the Democratic primary—he did win twenty of the state's twenty-four convention delegates. Johnson saw the writing on the wall, and rather than lose to McCarthy a few weeks later in the Wisconsin primary, he announced he was withdrawing from his own re-election campaign. Nothing like it had ever happened before in American politics, and nothing has since.

There are some surprises, Sandbrook shows, in the story of McCarthy's 1968 triumph in New Hampshire: First, the vote for McCarthy was not primarily an antiwar

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vote. Exit polls suggested that most voters didn't know where he stood on it. That's because his TV ads made it impossible to tell whether he was for or against the war. Pollsters concluded that "his vote was an anti-Johnson vote, not an antiwar vote." Voters were anti-Johnson because of urban riots and "crime in the streets" as well as because of Vietnam.

Another surprise: the media liked McCarthy in New Hampshire in 1968. In the Democratic primaries this year, the media killed Howard Dean after he led a youthful antiwar insurgency within the party that had some similarities to McCarthy's. But back in 1968, the national press was "extremely generous" to McCarthy—Sandbrook couldn't find any hostile coverage. He doesn't try to explain why.

In addition to the surprises, there are also some secrets behind the 1968 McCarthy campaign. The first is that it was not a grassroots, shoestring volunteer effort. In fact, it was the most expensive and best-financed campaign in the history of Democratic primaries until that time. McCarthy's money came primarily not from small donations but rather from big contributors—especially from Wall Street. Why so many on Wall Street wanted to dump Johnson in favor of an antiwar liberal is a question Sandbrook does not consider. The five biggest contributors, at $100,000 each, included Martin Peretz, then a young Harvard instructor married to the Singer sewing machine heiress, and later publisher of *The New Republic*; he would remain a supporter of McCarthy's presidential campaigns on and off for the next twenty years.

The other secret of New Hampshire in 1968: McCarthy never intended to drive Johnson out of the White House. As George McGovern explained in a 1970 interview, "They were looking for somebody to frighten Johnson into changing his policy. They never thought in terms of actually taking the nomination away from him."

Why did McCarthy challenge Johnson? He had never been a maverick, a rebel or a peacenik. Throughout his career in the House and Senate before 1968, Sandbrook shows, he had been a conventional cold war liberal, fiercely anti-Communist and voting the AFL-CIO line on domestic issues. His transformation into the standard-bearer of the liberal antiwar movement is the central story of the book.

Unlike the other Catholic antiwar senator of 1968, Bobby Kennedy, who joined the race four days after the New Hampshire primary, McCarthy experienced little in his early life to suggest he might end up in Washington. He grew up in a farming town in southern Minnesota suffering through the Depression but got the best education rural Catholic Minnesota could provide: He was sent to the Benedictine monks at St. John's Abbey and university. St. John's had an "enormous impact" on him and "irrevocably molded his character." Later, when he went to Washington, McCarthy still went to mass every day.

The Catholic intellectual world of the 1930s in which McCarthy grew up was committed to a radical vision of social justice. McCarthy's mentor at St. John's wrote in 1938 that capitalism was dying, "and should die." McCarthy's impulse at this point was to separate himself from a sinful bourgeois world. In 1941 he decided to study for the priesthood at St. John's, but the life of the novitiate didn't work out; he spent the war years working in the War Department in Washington; then got married and with his wife, Abigail, founded a Catholic anticapitalist rural commune in Minnesota. That didn't work out either, and McCarthy ended up teaching sociology at St. Thomas, a small Catholic college in St. Paul, where he found happiness at last.

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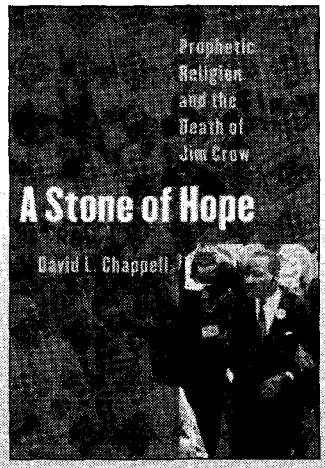

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as a Catholic intellectual in St. Paul, he was recruited in 1948 to run for Congress and fight the Communists in the Democratic-Farmer-Labor Party. During the hard years of the Depression, Minnesota radicals and progressives had flocked to the left-wing Farmer-Labor Party, which had held the governorship from 1931 to 1936. The Minnesota branch of the Communist Party was one of the country's most active in the 1930s and '40s, and even though it had only 300 members, they played a strong role in the Farmer-Labor Party. In 1944, with the Communists and the CIO in pursuit of the Popular Front alliance with liberals, the Farmer-Labor Party fused with the Democratic Party. Even today the Minnesota Democrats call their party "the DFL."

Hubert Humphrey, mayor of Minneapolis, vowed to drive the Communists out of the DFL in 1948—and Gene McCarthy was recruited as part of that effort. The campaign was ruthless; the Communists were denounced as subversives and appeasers. The liberals' success was total, and the group that drove the reds out of the party went on to dominate the DFL for a generation, producing two vice presidents and three presidential candidates—Humphrey, McCarthy and Walter Mondale.

Over the next decade, Republicans tried to challenge McCarthy as insufficiently anti-Communist but never succeeded. "I have supported the un-American activities committee and every basic piece of legislation directed to control subversive activities," he told the press during the 1952 campaign. He was right about that.

The Democrats dominated Congress during McCarthy's years in Washington, which made it seem like a good time to be a liberal there. In 1959, when he went to the Senate, the Democratic margin was 65 to 35; in 1965, it was 68 to 32. That seems unbelievable today. But the liberals had a hard time, because the Solid South was still Democratic, which meant conservative Southern Democrats headed all the key committees. Soon McCarthy became bored with the Congressional world of "protocol, alcohol and Geritol" (Adlai Stevenson's description of the diplomatic world). That boredom eventually contributed to his willingness to run for President in 1968.

McCarthy gained national fame at the 1960 Democratic National Convention, when he opposed Kennedy and nominated Stevenson in an uncharacteristically passionate speech on national TV: "Do not turn away from this man. Do not reject this man.... Do not leave this prophet without honor in his own party." In 1968 the Stevenson people remembered, and provided him with key financial and tactical support. And of course the Kennedys remembered too.

McCarthy's transformation from militant cold war anti-Communist to critic of the Vietnam War provides a fascinating lesson in how people can change their minds. In 1960 he said, "Our policy must be to assist within all possible means the liberation of people who are subject to Communist tyranny." He never questioned the morality of intervention or the limits of American power. Between 1961 and 1964, his colleagues Wayne Morse, Ernest Gruening and George McGovern began to question White House Vietnam policy, but not McCarthy. In 1964, he voted for LBJ's Gulf of Tonkin resolution, authorizing the President to use "all necessary measures" in Vietnam.

McCarthy was not pushed toward an antiwar position by his constituents, nor was he influenced much by the growing antiwar movement on college campuses. Instead, he learned a different way of looking at the war—from J. William Fulbright, chair of the Foreign Relations Committee, to which McCarthy was appointed in 1965. The committee became the most important institution in Congress for criticism of the war. By 1966, McCarthy had figured it out: The conflict in Vietnam, he declared, should not be understood as a cold war confrontation but rather as "a South Vietnamese civil war." (Defense Secretary Robert McNamara apparently wasn't listening; he told Errol Morris in the film *The Fog of War* that he didn't hear that idea until two decades after the war's end.)

The most important influence on McCarthy after Fulbright seems to have been antiwar Catholic writers. They drew on Pope John XXIII's 1963 antiwar encyclical "Pacem in Terris," in which the Pope declared, "We must obey God rather than men." They also revived the "just war" theory, which required a proportionality between means and ends. *Commonweal* magazine, which McCarthy had been reading all his adult life, in 1966 called the war "unjust," "immoral...a crime and a sin."

McCarthy's antiwar position in 1967–68 was hardly radical—he offered the basic liberal fare that dovish senators had been promoting for two years: stop the bombing of the North, negotiate with the National Liberation Front, withdraw troops in phases and support a coalition government in Saigon. Nevertheless, those proposals were strikingly different from Humphrey's—the Vice President and fellow Minnesotan

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called Vietnam "our great adventure, and what a wonderful one it is!"

While Johnson's withdrawal from the 1968 race was a triumph for McCarthy, it was also a disaster—because now he had to run against Bobby, who was also against the war. Sandbrook agrees with Ronald Steel, who wrote in his book *In Love With Night: The American Romance With Robert Kennedy* that in 1968, "McCarthy was by far the more radical candidate": McCarthy said Vietnam "was no accident"—he no longer viewed it as a blunder or tragedy of good intentions. He went on to challenge the entire cold war orthodoxy, arguing that the United States should recognize Communist China, open relations with Cuba and abandon the notion of Manifest Destiny.

Then Bobby was shot, followed by Chicago and Mayor Daley's police, and Humphrey's nomination. Sandbrook argues that McCarthy "deserved to lose" the nomination, because his campaign after New Hampshire was so "inept" and "chaotic" and because his public statements were so "willful and obscure."

On Election Day, Humphrey lost to Nixon by 500,000 votes. McCarthy was partly responsible for Nixon's victory, Sandbrook suggests, because he did not endorse his old Minnesota mentor until a week before the election, and he failed to campaign for the Democratic candidate or rally his supporters in key states —New Jersey, Illinois and California—that Nixon carried by small margins.

But the problem was not just Nixon's razor-thin margin of victory. The larger problem was that the Democrats lost 12 million votes between 1964 and 1968—"the greatest electoral disaster of the century," Sandbrook calls it—and he again holds McCarthy partly responsible. He cites Joseph Rauh, who warned in October 1967 that an antiwar challenge to LBJ would break "the liberal-labor-Negro coalition that had elected every liberal president and made possible every liberal advance since the 1930s." Of course, that turned out to be true. The argument here is that the McCarthy campaign, in concentrating on Vietnam, turned away from the white working-class voters drawn to the "law and order" issue—which was what got Nixon elected.

And even on Vietnam, Sandbrook argues, McCarthy was a disaster: Instead of ending the war, he helped prolong it. If Humphrey had been elected, Sandbrook thinks, he almost certainly would have ended the war sooner than Nixon did. Sandbrook quotes Blair Clark, who helped run the '68 McCarthy campaign (and who later became editor of this magazine); he said in 2000 that the campaign "definitely had a deleterious effect on America."

It's a harsh judgment—the same judgment that Humphrey Democrats, like my father, offered the day after Nixon won in 1968. What the antiwar sons told their DFL fathers in 1968 is still true today: McCarthy was not wrong to challenge Johnson on the war. Johnson was wrong in not shifting his Vietnam policy to negotiations and withdrawal. Humphrey was wrong in failing to come out against the war soon enough to win over the antiwar Democrats. Had Humphrey won, he might have ended the war sooner than Nixon, but who knows? And thirty-five years later, both the sons and the fathers can agree that any Democratic President would have faced the split between antiwar reform Democrats and working-class whites who voted for Wallace in 1968 and eventually for Reagan. That split was hardly Gene McCarthy's creation.

After 1968, McCarthy began a long downhill slide into "irrelevance and obscurity." He ran for President again and again, getting fewer votes each time. In 1976 *The New Republic*, run by his old supporter Martin Peretz, endorsed him for President against Jimmy Carter, but he won less than 1 percent of the vote. However, McCarthy fought in the courts to get independent candidates on the ballot, and his success paved the way for Ross Perot and then Ralph Nader. In 1980 McCarthy hit bottom when he endorsed Ronald Reagan—because he hated Carter. In 1982 he ran for the Senate again in Minnesota, explaining, "I've suggested to Democrats that if they'll forgive me for being right, I'll forgive them for being wrong." He lost the primary.

Sandbrook's massively researched and footnoted book is soft on the larger sociopolitical context, and hard in its conclusion: McCarthy wasted his talent. The potential he demonstrated in New Hampshire to become a great liberal leader was undercut by his vanity, his arrogance and his personal vendettas. He never injected new ideas into political debate, he sponsored no significant legislation and his one great moment—New Hampshire in 1968—ended in disaster for his party, his country and, we could add, for the people of Vietnam as well.

Readers may disagree about 1968, but Sandbrook is effective in conveying the sense of a wasted talent. Garry Wills said it best: "Eugene McCarthy spent a good deal of his time trying to prove that he was too good for politics. What use was that? Most of us are too good for politics; but we do not make a career of demonstrating it." ■

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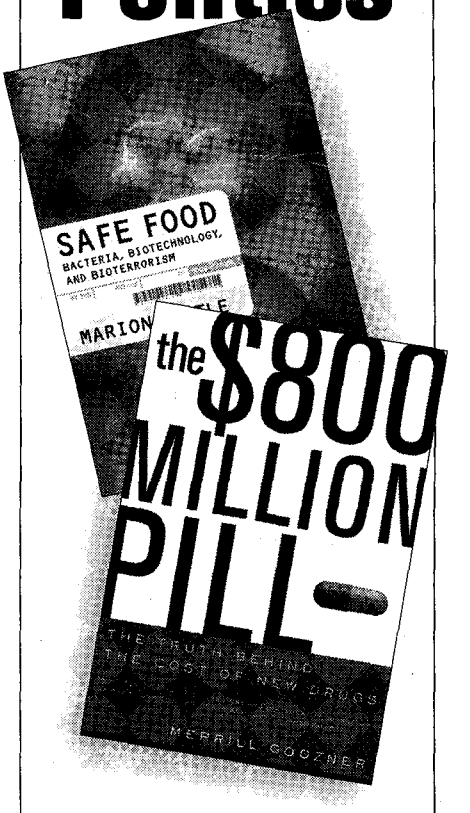

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PAUL MITCHINSON

SHOSTAKOVICH AND STALIN: The Extraordinary Relationship Between the Great Composer and the Brutal Dictator. By Solomon Volkov. Knopf. 313 pp. $30.

In early 1966, Leonard Bernstein threw a birthday party for Dmitri Shostakovich in Lincoln Center's Philharmonic Hall. Although the great Soviet composer couldn't attend, Bernstein bounded onto the stage and announced to a crowd of squirming schoolchildren that, in honor of the occasion, the orchestra would be performing one of Shostakovich's "gayest and most amusing works," the Ninth Symphony. It's like a "witty comedy in the theatre, where you're treated to one joke after another—puns, wisecracks, punch lines, surprises, twisteroos." The final movement is "like sitting down to a big serious banquet and being served hotdogs and potato chips." A perky violin solo set against the brass section is "like Mickey Mouse leading a football cheer."

Based on his latest book, it's a good thing Solomon Volkov wasn't invited to the party. Instead of comedy, Volkov hears in Shostakovich's Ninth "tragedy, lyricism, irony, and grotesquerie." Instead of playful allusions to Beethoven, he hears a "direct challenge to Stalin" and a "demonstrative act of creative insubordination." Instead of Mickey Mouse, he hears something closer to Alexander Solzhenitsyn.

Most audiences today listen to Shostakovich through Volkov's ears. It is a remarkable feat for a composer who never served time in a labor camp, never experienced internal exile and never suffered material privation of any kind in his adult years. Indeed, at the time of his death in 1975, Dmitri Shostakovich was widely considered, in the words of his *Pravda* obituary, a "faithful son of the Communist Party." He was Soviet Russia's most decorated composer, and his popular symphonies often came pre-packaged with dedications to make even the most hardened Communist bureaucrat smile: "October," "The First of May," "The Year 1905," "The Year 1917." Genuine dissidents such as Solzhenitsyn and Lydia Chukovskaya considered Shostakovich a coward and a villain. Shostakovich returned the compliment, allowing his signature to appear beneath a published denunciation of Andrei Sakharov. He had to be convinced not to sign a letter supporting the 1968 Warsaw Pact invasion of Czechoslovakia.

But twenty-five years ago, Solomon Volkov single-handedly destroyed this popular understanding of Shostakovich by publishing a manuscript that he alleged was the composer's memoirs, dictated to Volkov as a young Soviet journalist. *Testimony*, as the book was titled, was explosive. In its pages, Shostakovich was revealed to be a bitter opponent of Soviet power who tried to express his resistance in music. "The majority of my symphonies are tombstones," he allegedly told Volkov. "Hitler is a criminal, that's clear, but so is Stalin.... That is what all my symphonies... are about."

Testimony transformed Shostakovich's reputation in two ways. No longer considered a loyal servant of Soviet power, Shostakovich was increasingly understood, in one popular phrase, as a "secret dissident." His music, meanwhile, was scoured for evidence of this dissidence, which was held to be the music's "true" meaning.

There was just one problem: *Testimony* was not the document Volkov claimed it was. In the pages of *The Nation*, literary critic Simon Karlinsky noted that two lengthy passages appeared to be lifted verbatim from previously published Soviet sources. Laurel Fay, an independent scholar, quickly discovered five more such passages.

The discovery had an ominous significance. Shostakovich had apparently "authenticated" Volkov's manuscript by affixing his signature, along with the Russian word *chital* ("read"), to the first page of each of the manuscript's eight chapters. By coincidence, the recycled passages discovered by Fay and Karlinsky, which were entirely innocuous in content, all appeared on these signed pages. Shostakovich, in other words, had apparently authenticated nothing that hadn't already appeared in the Soviet Union.

In 2000, Fay finally managed to con-

Paul Mitchinson, a historian in Toronto, has written on music for the National Post, Newsday *and* Andante.com.

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firm her suspicions by examining a photocopy of the manuscript acquired by the Shostakovich Family Archive in Moscow. As she reveals in *A Shostakovich Casebook*, a collection of essays just published by Indiana University Press, not a single page "authenticated" by Shostakovich contains anything but previously published material. (Full disclosure: An essay I wrote for *Lingua Franca* is republished in *A Shostakovich Casebook*.) The manuscript's signed pages generally reproduce the exact word order, punctuation (including parentheses, commas, dashes and quotation marks) and paragraph breaks of the earlier published material. Sentences that date the original passages have been deleted by hand. Two inflammatory passages, which Volkov's supporters recently cited as evidence of Shostakovich's dissidence, did not originally appear on these signed pages but were added later. In most cases, this word-for-word copying stops precisely at the end of the signed manuscript page—the very next word of the following (unsigned) page often veers off into uncharted anti-Stalinist territory.

One explanation, offered up in a 1998 book by Allan Ho and Dmitri Feofanov, *Shostakovich Reconsidered*, is that Shostakovich had a phenomenal memory, and often repeated himself in conversation. But how did Volkov, who did not record the conversations, manage repeatedly to reproduce the exact wording and punctuation from his scribbled shorthand notes? How could Shostakovich have confined his word-for-word repetitions to the precise length of one typewritten page? And finally, why did these passages always end up on the first page of each of Volkov's chapters?

Since a cloud of suspicion now hangs over *Testimony*, it is not surprising that Volkov keeps quotes from his conversations with Shostakovich "to a minimum" in his latest book. Nevertheless, he adds, everything in *Shostakovich and Stalin* is "informed by these conversations and by the insight they afforded me into the composer's psyche, his worldview, and his way of being." It shows. *Testimony*'s contradictions and controversies form the core of this book, and Volkov works hard to verify the claims he first advanced a quarter-century ago. *Shostakovich and Stalin* is *Testimony* with footnotes.

This begins with its subtitle, which alludes to an "extraordinary relationship" between the composer and the dictator. Volkov describes it as an "unprecedented duel," in which Stalin was "obsessive" in his attempt to "micromanage" Shostakovich, and Shostakovich equally obsessive in his resistance, which he expressed in music. What do we know about this relationship? In concrete terms, Shostakovich and Stalin met on a single occasion, during a 1943 competition to write a new Soviet national anthem. (Shostakovich lost.) When Shostakovich was reluctant to travel to New York City for the First World Peace Conference in 1949, Stalin called him on the phone. A few letters written by the composer expressing gratitude or requesting a favor have recently appeared, but there is no evidence that Stalin ever replied.

But behind the scenes, according to Volkov, Stalin painstakingly orchestrated the finest details about Shostakovich's treatment. When Shostakovich's opera, *Lady Macbeth of Mtsensk*, was infamously denounced in an anonymous 1936 *Pravda* editorial titled "Muddle Instead of Music," Volkov isn't content to say that Stalin initiated or approved of the attack—he insists that Stalin personally dictated it. When Alexander Fadeyev, a Stalin favorite, hurls a generic insult at artistic "leftists" as "people in glasses, with skinny legs and thin blood," Volkov is convinced that this is a "portrait of a completely recognizable, concrete figure, Shostakovich, [which] surely reflects the content of a conversation between Fadeyev and Stalin."

But while Stalin had clear tastes in music, and wanted composers carefully "directed," his specific knowledge about Shostakovich was actually rather spotty. During an informal meeting the day after the *Pravda* attack, Stalin revealed that he wasn't even aware that Shostakovich had written one of the most popular songs of the day, "The Morning Greets Us."

Whether Stalin was obsessive or ignorant about Shostakovich, the effect was the same. Shostakovich lived in fear. Informed that he should submit future opera librettos to the Committee for Artistic Affairs, Shostakovich simply stopped writing opera. He poured his creative energy into symphonies and string quartets, patriotic song and film music. His public martyrdom in *Pravda* insured a sympathetic audience, which was long accustomed to extracting Aesopian meanings from the most seemingly innocuous works. It didn't matter that Shostakovich publicly agreed in 1938 that his Fifth Symphony was a "creative answer of a Soviet artist to just criticism," or that it ended with ecstatic D-major chords punched out over booming timpani. His ritual humiliation insured that many listeners would hear only "forced rejoicing."

But it is certain that no one, including Communist Party officials, heard in Shos-

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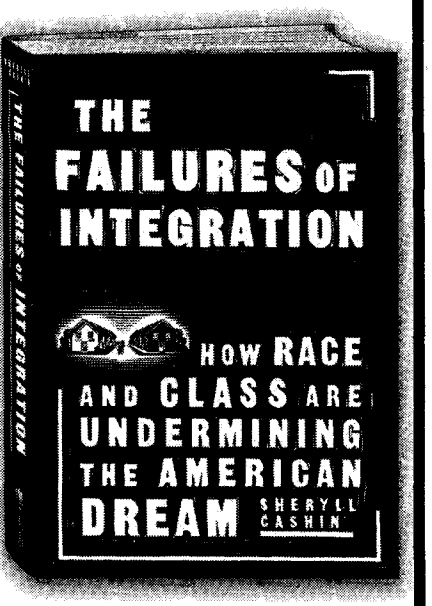

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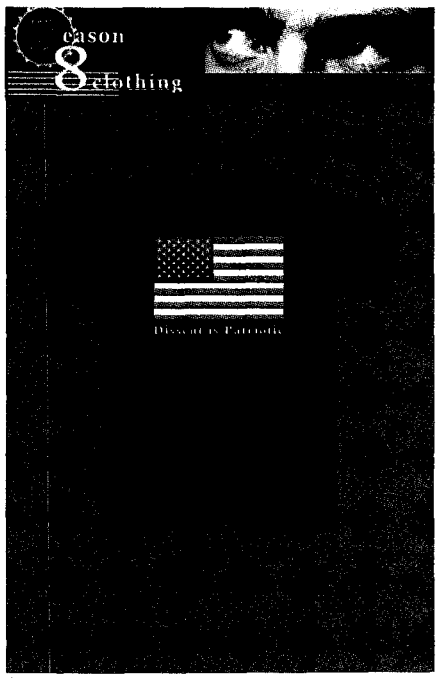

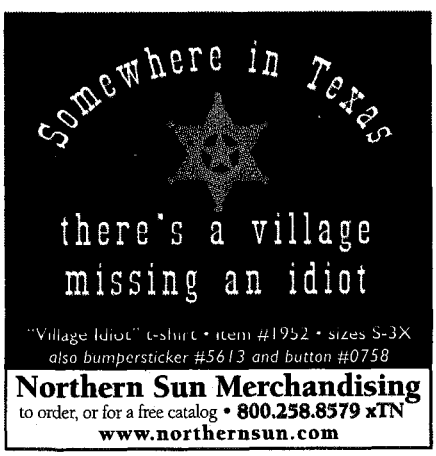
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takovich's music anything approaching "insubordination." Consider: In 1945, Solzhenitsyn was sentenced to eight years in the Gulag for veiled criticism of Stalin in his private letters. That same year, if we believe Volkov, Shostakovich issued nothing less than a "direct challenge to Stalin" in his Ninth Symphony. His punishment? The following year Shostakovich was awarded the Order of Lenin and collected his third Stalin Prize in five years. (His first two had netted him 100,000 rubles each.) While the average Soviet worker earned approximately 5,000 rubles a year, Shostakovich was given almost a quarter of a million rubles in honorariums by the Union of Soviet Composers in 1946–47, independent of his other income. He asked for more. Shostakovich complained to secret police chief Lavrenty Beria about his "situation," and was soon informed that he would be offered even greater rewards: a spacious apartment in Moscow and a new dacha with 60,000 rubles to furnish it.

"All of my affairs are sorting themselves out splendidly," reported Shostakovich in a personal letter to Stalin in May 1946. "All of this has made me extraordinarily happy." Volkov incongruously describes this letter as "strikingly businesslike," and avoids mentioning other letters Shostakovich wrote to Stalin, including one written just after moving into his new Moscow apartment: "With all my heart I thank you for your concern about me. The main thing I very much want now is to justify—if only to a small degree—the attention you have shown me." (Historian Leonid Maximenkov first published these letters in Russian in 2002. They will be published in English this summer in *Shostakovich and His World*, a collection of essays from Princeton University Press.)

How to square the reality of such pampered treatment with Shostakovich's alleged insubordination? Volkov expands on a theory first sketched out in the introduction to *Testimony*, in which he claimed that Shostakovich should be understood as a *yurodivy*, a Russian "holy fool." As embodied in the works of Pushkin and Mussorgsky, the *yurodivy* is the "largely autobiographical embodiment of the figure of the artist, who—in the name of the downtrodden people—speaks dangerous but necessary truths to the face of the tsar. This was the role that Shostakovich assumed as his life model.... Shostakovich placed himself as a true successor to Pushkin's and Mussorgsky's Russian tradition of artistic dialogue and confrontation with the tsar."

It is not enough, in other words, for Shostakovich to have regretted his collaboration, or for his audience to have sympathized with his predicament. Shostakovich's music must have a clear and unambiguous semantic significance, a "dangerous truth" that was intended by the composer, even if it somehow managed to elude the only intended recipient—Stalin himself. This leads to a whole series of interpretations, first made public in *Testimony*, and by now almost commonplace. The famous "invasion" theme of the Seventh Symphony, ostensibly a musical depiction of the Nazi invasion of Russia, was in reality conceived before the war as the "Stalin" theme. A movement from the Tenth Symphony is a fiendish "musical portrait of Stalin." The Eleventh, ostensibly dedicated to the martyrs of the 1905 revolution, was actually a protest against the 1956 invasion of Hungary. A song cycle, *From Jewish Folk Poetry*, is actually a protest against Stalinist anti-Semitism. "He did not bother writing letters to Stalin," Volkov writes; "instead he wrote his Jewish cycle." For Volkov, listening to music is equivalent to deciphering the words of a letter.

But how can a listener tell the difference between a loud D-major chord signifying joy from a loud D-major chord signifying bitterness? And how do we know that Shostakovich actually intended the messages Volkov attributes to him? Follow the footnotes. How does Volkov know that the Tenth Symphony contains a musical portrait of Stalin? "Shostakovich himself told me this," he writes, "and later it was confirmed by Maxim, his son." In fact, in 1998 Maxim explicitly dismissed that notion in the *Los Angeles Times* as an unfounded rumor. "I think some musicologists set this idea forth. Others repeated it.... Father never said it was a portrait of Stalin." Volkov's source is a 1981 interview in which Maxim repeated the rumor without attributing it to his father. What's worse, in that same interview, Maxim explicitly dismissed *Testimony* as a fake. "They are not my father's memoirs," he told his German interviewers. Volkov "probably slotted numerous pages between the unnumbered pages of the interview. It's easily done."

Similarly, creative footnoting can be found in his claim that Shostakovich's Seventh Symphony was conceived before the outbreak of World War II. Since there is no written evidence to back this up, Volkov cites a recent interview by Shostakovich's favorite student, Galina Ustvolskaya, who allegedly heard from Shostakovich himself that, in Volkov's words, "the Seventh was almost complete before the war."

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Here's what Ustvolskaya actually said:

> Once, in 1939–40, Shostakovich...told me that he had almost completed his Seventh Symphony. There remained only the addition of a coda and some corrections; he mentioned that he didn't know how best to name it: the "Lenin" or the "Leninskaya" [Symphony]—Dmitri Dmitrievich highly respected V.I. Lenin and always wanted to dedicate one of his works to him.

In other words, Ustvolskaya is suggesting that the Seventh wasn't a work depicting the crimes of Stalin or Hitler. Rather, it was a work intended to glorify the founder of the Soviet state. Exactly how this helps Volkov's case is unclear.

Like Volkov's earlier book, *Shostakovich and Stalin* is a rich source of rumor from Russia's greatest literary gossip columnist. For this reason it is immensely valuable as a collective portrait of Russia's cultural intelligentsia, how it survived under the Soviet regime, and how artistic expression came to fill in the gap created by political censorship. Volkov tells the stories that artists, writers and musicians whispered to each other when they believed the secret police weren't listening. In this context, it hardly matters whether Shostakovich actually intended his music as protest against Stalinism; this is how it was understood in a world filled with terror.

Paradoxically, one possible reason Shostakovich has assumed such an exalted position among the intelligentsia is his cowardice. While it anguished the composer in his later years, it consoles his survivors. Dissidents, after all, sacrificed careers, livelihood and often their lives in a seemingly hopeless quest, and their behavior implied a moral judgment of those unwilling to share in such a burden. The dissident was a stinging, silent rebuke. Shostakovich, on the other hand, is a reassurance. He embodies the quiet hope of all who compromised and collaborated with a monstrous regime that such actions didn't really matter in the greater scheme of things. Shostakovich "unabashedly followed the rules of the game," wrote the great Russian soprano Galina Vishnevskaya, "because he knew the time would come when the verbiage would fade away, when only his music would remain." It was a desperate hope, and Solomon Volkov probably hopes to hasten such a time. Instead, he manages to reduce Shostakovich's music to mere anti-Stalinist verbiage, cheap slogans that mock the composer's accomplishments and the horrific compromises he made with a brutal dictator. ■

Why the Bubble Popped

ROBERT SHERRILL

This clutch of books offers an excellent retrospective on the recent stock-market crash, which wiped out $8.5 trillion in market value. The value of individual retirement accounts dropped by one-third, and in just twelve months, 2 million Americans lost their jobs.

But the lessons from the crash will probably soon be shrugged off. Memory will be softened by a market that is beginning to recover at an impressive pace. The NASDAQ index, a swamp where tech alligators lurk, is double its value of eighteen months ago. That's a pity. Politicians never work up the nerve to really reform Wall Street until, as after the 1929 collapse, half the population in some cities is unemployed and ex-millionaires start jumping out of windows.

Many of the exploiters and attitudes and wobbly rules that launched the crash are still with us. A sign of the unchanging times could be found in the February 25 *Wall Street Journal*, which reported that Goldman Sachs is once again suspected of violating securities rules, this time by charging excessive bond-trading price markups. The accompanying report also sounds normal: Goldman's chief executive took home $21 million last year, a 75 percent increase over 2002.

Still, we can try to read the future in these analyses of the past. Paul Krugman's essays have the snappy smartness his followers have come to expect, but for me the best interpretations of the marketplace and the so-called New Economy come from Robert Pollin, a University of Massachusetts professor of economics, who for one thing helps strip the populist mask from Bill Clinton; Doug Henwood, whose tart humor keeps one awake even when he discusses Wagnerian topics, as in the chapter on globalization, where he calls Ralph Nader "a special case, a man who seems proud of his (locally produced) hair shirt"; Joseph Stiglitz, a Nobel Prize–winning economist who writes with admirable candor about the sellouts of some of his colleagues in the Clinton years; and Roger Lowenstein, a master (as I first learned from his book *When Genius Failed*) at making our financial pirates as interesting as those who sailed with Long John Silver. David Denby's *American Sucker* is not so much a critique of the era as it is a tragicomic, introspective tale of how much it can cost an ignorant investor to learn the true character of Wall Street. Denby, a film critic for *The New Yorker*, lost nearly a million.

Robert Sherrill, a longtime contributor to The Nation, *is the author of, among other books,* The Oil Follies of 1970–1980: How the Petroleum Industry Stole the Show (And Much More Besides) *(Anchor).*

IN THIS REVIEW

THE GREAT UNRAVELING: Losing Our Way in the New Century.
By Paul Krugman.
Norton. 426 pp. $25.95.

ORIGINS OF THE CRASH: The Great Bubble and Its Undoing.
By Roger Lowenstein.
Penguin Press. 270 pp. $24.95.

AFTER THE NEW ECONOMY.
By Doug Henwood.
New Press. 269 pp. $24.95.

CONTOURS OF DESCENT: U.S. Economic Fractures and the Landscape of Global Austerity.
By Robert Pollin.
Verso. 238 pp. $21.

THE ROARING NINETIES: A New History of the World's Most Prosperous Decade.
By Joseph E. Stiglitz.
Norton. 379 pp. $25.95.

AMERICAN SUCKER.
By David Denby.
Little, Brown. 337 pp. $24.95.

Most of these writers properly feel that the crash was caused by a combination of all or most of these influences: deregulation to the point of anarchy; a towering secrecy that conceals the financial world from ordinary investors; greed that distorts capitalism and the character of those who administer it; a justice system that Wall Street malefactors know they need not fear; and, to personalize the problem, we are offered Alan Greenspan and his fellow conspirators, chief of whom were Clinton and his Treasury Secretary, Robert Rubin, who was a top exec at

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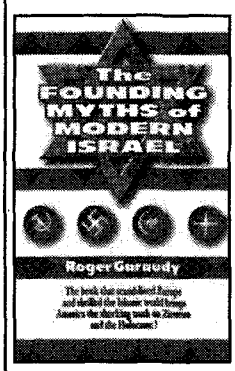

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Secularism as a Dirty Word:
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Goldman Sachs before joining Clinton's Cabinet and a top exec at Citigroup after leaving it. In Lowenstein's opinion, Clinton was, except for Ronald Reagan, "the most market-oriented president since the Roaring Twenties."

If the crash proved anything, it was that crime pays. Sufficient tax credits were claimed to offset the measly $1.4 billion fine that J.P. Morgan, Morgan Stanley, Merrill Lynch, Credit Suisse First Boston, Citigroup, Goldman Sachs and four others agreed to fork over for misdeeds that, as Stiglitz says, "put most acts of political crookedness to shame.... The scale of theft achieved by the ransacking of Enron, WorldCom, and other corporations in the nineties was in the billions of dollars—greater than the GDP of some nations."

Punishment of Wall Street's brigands has been neither swift nor sure. As of late February, seven of Enron's top executives had confessed to robbing the public, and eleven others were under indictment for that crime—but not one was behind bars. As for the top dog, Kenneth Lay, he seems to have been forgotten.

Lowenstein reminds us that at the start of the 1980s, 90 percent of the money managed by pension funds was invested in bonds, bills and cash. Stocks had had such a middling performance for half a century that they were considered to be just a little better than mattress stuffing. But "by the late 1990s, America had become more sensitive to markets, more *ruled* by markets, than any country on earth. This is the culture that led to prosperity and also to Enron. Markets became virtually sovereign—unchecked by corporate watchdogs or by government."

Unchecked, indeed. Out of control is more like it. The root cause of the lawless boom and the crash that followed was the deregulating mania that started with Reagan and Bush I. For a dozen years their administrations, in the words of Stiglitz, "glorified free markets and demonized government regulations," and this attitude was carried over into the Clinton Administration. Robert Pollin agrees that Clinton's administration was defined by "virtually unqualified enthusiasm for...the deregulation of financial markets—with Alan Greenspan providing crucial leadership in granting to financial traders the leeway they had long sought to freely speculate with other people's money."

The deregulation tide that began in the 1970s became a huge wave. Electricity was deregulated. Telecommunications was deregulated. And Wall Street, of course. The most disastrous deregulation resulted from the killing of the venerable Glass-Steagall Act, which had been around since 1933. The purpose of Glass-Steagall was to maintain a wall between commercial banks and investment banks. The former take our deposits and lend money to people and corporations that can prove they have a good credit rating. The much more profitable investment banks dote on risks and get huge fees for helping corporations issue new bonds and stocks. The reason for the wall between the banks was obvious: If it were removed, the commercial side of the bank would be pressured to join the dangerous fund, lending money to companies that didn't deserve more credit—even companies teetering on the brink of bankruptcy—so that the investment-banking side could continue getting their lush kickback fees.

That's exactly what was done by many of the banks, including the banking sections of the giant brokerage firms, after Glass-Steagall was "reorganized" out of existence by the Clinton Administration. The lure of more mega-fees kept them propping up behemoth clients they knew were dying of their own excesses.

Another reason banks kept propping them up was that they feared that if the corporations did go bankrupt, the banks' own nefarious participation would be exposed. As indeed it usually was.

Consider WorldCom's support by Citigroup (an octopus including Citibank, Travelers Insurance and Salomon Smith Barney brokerage). That octopus, which lent many millions to WorldCom and was lead underwriter of a $5 billion debt, kept touting WorldCom stock as a "strong buy" almost to the day the company went under.

The investment banks' advance troops in the assault on the gullible public were the analysts. Some of these extremely effective pitchmen, Doug Henwood reminds us, were "publicly recommending stocks that they privately disdained...stocks that no sane, fully informed persons would ever have bought." Henry Blodget, an analyst at Merrill Lynch whom David Denby had the misfortune to befriend, gained notoriety for promoting a stock that he privately described as a "piece of shit." Merrill Lynch, which must have known that sort of thing was going on, was fined a trifling $100 million for failing to stop the conflict of interest within its walls. As for Blodget, his punishment was to be banned for life from the securities industry, but that hardly reduced him to poverty or refilled the pockets of those, like Denby, he helped fleece.

And the same can be said for the closing-the-barn-door banning of Jack Grubman,

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whose allegedly fraudulent research brought tens of millions of dollars to Salomon and sometimes as much as $20 million a year to his own pockets. In his role as cheerleader for telecommunications, he foresaw a glorious future for WorldCom, Qwest and Global Crossing, now all wreckage.

Henwood's quote from former investment banker Nomi Prins, describing what happened to the telecom industry in the second half of the 1990s, is the abbreviated morality tale of the decade:

> Wall Street raised $1.3 trillion of telecom debt and sparked a $1.7 trillion merger spree, bagging $15 billion in fees for the effort. Then, the accumulation party ended. The industry collapsed amidst a $230 billion pile of bankruptcies and fraud, wiping out $2 trillion in market value and defaulting on $110 billion of debt (half of all defaults). Telecom execs pocketed $18 billion before they cut 560,000 jobs. And in 2003, over 96% of the capacity built lies dormant.

The Accounting Game

Much of the genius behind the bubble's inflation must be credited to crooked accounting practices. To sucker the public into buying their stock, corporate accountants juggled the books so that profits seemed much higher than they were and losses could be hidden.

Enron, for example, entered into contracts that would have produced profits many years ahead, if ever, and claimed them as current profits. And many millions of dollars in stock options that corporate executives gave themselves should have been counted as expenses, but usually weren't. Paul Krugman gives an example: "In 1998 Cisco reported a profit of $1.35 billion; if it had counted the market value of the stock options it issued as an expense, it would have reported a loss of $4.9 billion."

This kind of crookedness had gone on for years, but in 1993 the Financial Accounting Standards Board (FASB) recommended a rule that would have ended it. The rule was immediately and fiercely opposed in Congress by members who had received bountiful gifts from both Wall Street and the accounting industry. None were more grateful for their largesse than that odd Democrat from Connecticut, Senator Joseph Lieberman.

He sponsored a resolution condemning the FASB's proposal on humanitarian grounds, even though, throughout the corporate world, "75 percent of options went to people who ranked in the top five in their companies. More than half of the remainder went to the next fifty managers...an unprecedented accumulation of private wealth," writes Lowenstein. But Senator Lieberman made it sound like "millions of ordinary workers would now be cast into a cold, optionless world...back to breadlines and hawking apples."

The FASB surrendered.

Why, sometimes it almost seemed that those seeking deregulation were selfishly motivated. Even as his wife sat on Enron's board, Senator Phil Gramm pushed through legislation exempting the corporation's practices from regulation. And when Gramm left the Senate, says Krugman, he joined UBS Warburg, the company that bought Enron's trading operations.

Speaking of corruption, what happened to Arthur Andersen, one of the most venerable of the Big Five accounting firms (established in 1913), really shook Wall Street. If the Big Five couldn't be trusted to give reliable accounting, the stock market had truly become a gambling den. There had been whispers of Arthur Andersen's unreliability ever since its part in the savings and loan scandal. Actually, these whispers made it more attractive to some clients. Pollin points out that in 1990 George W. Bush had successfully called on Arthur Andersen to OK his questionable books at the Harken Energy Corporation; and in a promotional video in 1996, Dick Cheney, then chairman of Halliburton, had come straight to the point, praising Arthur Andersen for giving him "good advice...over and above the just sort of normal by-the-book auditing arrangement."

Enron, WorldCom, Global Crossing and Tyco International also got more than "normal by-the-book" auditing on their way into oblivion, and Arthur Andersen soon felt the flames as well.

The Good Old Reliable SEC

Having killed Glass-Steagall, the deregulators would have liked to kill the Securities and Exchange Commission, too. But they knew they couldn't dare even suggest that. The SEC had been an almost sacred regulator of the securities market since its founding in 1934, when it became the cop on the corner empowered with regulations that were meant to build a sense of ethics among market professionals and give the public confidence that somebody was trying to protect them from the hustlers.

But if they couldn't kill it, they could sure weaken it. The SEC has always been "ludicrously underfinanced," Krugman says quite accurately. "Staff lawyers and accountants are paid half what they could

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get in the private sector, usually find themselves heavily outnumbered by the legal departments of the companies they investigate, and often must do their own typing and copying." George W. Bush would see that this continued.

The public's outrage over the stock-market collapse and the accounting scandals forced Congress in the summer of 2002 to pass the Sarbanes-Oxley Act, which was aimed at increasing regulation of public corporations' accounting practices. The SEC would implement the act. Bush grudgingly signed the act into law, but (according to Pollin's view of the episode) the President got to strike his customary low blow by slashing the SEC's budget 27 percent below what the legislation had proposed.

More accurately, that was the first low blow of the day. His second was to appoint William Webster to head the auditing oversight board set up by Sarbanes-Oxley. Obviously, if Bush wanted the board to fail, he chose the right man. Webster had previously directed two failed agencies, the FBI and the CIA, and was currently, writes Pollin, "a board member of a company under investigation for securities fraud." Press contempt for that appointment forced a mediocre replacement, and all things point to the SEC's withering away.

And Then There Was the Fed

There has been no bureaucrat more exalted by the business world, by Congress, by Clinton and his predecessors, and by the press than Alan Greenspan, chairman of the Federal Reserve Board. And there is no stranger phenomenon in recent history than that exaltation, for Greenspan has proved himself to be a very anti–everything that keeps us going.

He is an anti-inflation, antitax, antispending, antiregulation, antigovernment nut. Admittedly, his mistakes have sometimes been fortuitous. In 1974, as chairman of the Council of Economic Advisers, he was so eager to fight inflation (which wasn't really high) that he persuaded President Ford to cut government spending right in the middle of a sharp recession, which just made the recession worse. Angry voters dumped Ford in 1976.

The Federal Reserve System, which was set up in 1913, is the most undemocratic part of our government. Although its actions affect every legal or illegal resident of the country, it has no input from the general public. The Fed is literally owned by the largest national banks, and the Fed's board, which meets in secret, has never had a member who came from the labor movement or at least momentarily entertained a populist thought. The Fed has two mandates from Congress: Adjust the interest rates in such a way as to maintain a healthy economy, and promote employment. A moderate amount of inflation—meaning more money in circulation—is good for employment. But banks hate it because it lowers the value of the dollar. So the Fed has always ignored the second half of its mandate. Consequently, says Stiglitz, "there is little doubt that many of the postwar recessions have been caused by the Fed, as it has stepped on the brakes too hard in its fixation that unless it does so, inflation will break out."

Chairman Greenspan has religiously followed that absolutely-no-inflation dogma as it affected money (creating the recession

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that doomed the elder Bush at the polls). But he has not minded the inflation of asset values on Wall Street, and by ignoring them he helped create the boom-bust.

In 1996, when the Standard and Poor's Index stood at 740, Greenspan asked, "How do we know when irrational exuberance has unduly inflated asset values?" But three years later, when the S&P had doubled and signs of the bubble were everywhere, he still took no action. In a 2002 speech to his chums at Jackson Hole, he tried to defend his inaction, claiming "it was very difficult to definitively identify a bubble until after the fact—that is, when its bursting confirmed its existence." And there was nothing he could have done about it anyway, he said. "Is there some policy that can at least limit the size of a bubble and, hence, its destructive fallout?... The answer appears to be no.'"

Actually, the answer appears to be yes, and he knew all along what it was. He could have raised the market's margin requirements, thereby reducing how much stock people could buy with borrowed money. Krugman reminds us that at the September 1996 meeting of the Federal Open Market Committee, Greenspan told his colleagues, "I recognize that there is a stock market bubble problem at this point" and that it could be solved by "increasing margin requirements. I guarantee that if you want to get rid of the bubble, whatever it is, that will do it."

But he didn't do it. Nor did he lobby behind the scenes against the huge capital gains tax cut of 1997, which fed the market with another torrent of investor money. Not only did he do nothing to tame the market, writes Stiglitz, "he switched to becoming a cheerleader for the market's boom, almost egging it on, as he repeatedly argued that the New Economy was bringing with it a new era of productivity increases."

Readers who pay attention to these books will have to conclude that the system is broken. Or maybe they won't. If, despite what happened to their 401(k) last time, they still want to try the market, then they will probably agree with what Henry Blodget told David Denby at their last tête-à-tête in 2001:

> People have now lost a lot of money. They can say, "I made a mistake, I lost a lot," or they can say, "Somebody fucked me." It's so much easier to say the latter. In two years, the revisionist view will be that nothing bad would have happened if the system weren't broken. But nothing would be further from the case. It was a *bubble*. This is just the way the markets behave and the way that people behave. ■

Classified

While we reserve the right to edit, reject or reclassify any advertisement, The Nation *wishes its readers to know we don't have the facilities to check the promises made by our advertisers, and we have a strong presumption against censoring any advertisement, especially if we disagree with its politics.*

ART

WORKING-CLASS ART: My visual reactions to the world around me (www.fecalsandwich.com). Socially inspired artwork.

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ANSWERING MEL GIBSON: Jesus Fictional—Incontrovertible Proof. Josephus created Jesus, gospels. Scholarly booklet: $10. Abelard, Box 5652-A, Kent, WA 98064. (Details: SASE.)

HOLD CONGRESS ACCOUNTABLE! Choose from eight petitions, one to fifty signatures (hand-delivered to Washington, DC.; details: SASE). $7 includes tax, postage & handling. To:THE ART GALLERY, PO Box 506, Fiskdale, MA 01518.

POST-RAGNAROK HUMOR by Batdog Babe. Free copy: 10402 N. 32nd Lane (Apt. 525), Phoenix, AZ 85051.

BOOKS

SUPERPOWER AMERICA: How the Military Industrial Complex Defeated the American People. Excerpt: www.superpoweramerica.com. Order from Amazon.com and barnesandnoble.com.

GEORGE H.W. BUSH/JFK'S assassination, 14 volumes. On C.D. or individually. Oswald's Friend; de Mohrenschildt Story. CIAJFK.COM (831) 465-9272.

WWW.ETERNALTREBLINKA.COM. "Compelling, controversial, iconoclastic" —*Midwest Books Review.* "It grips like a thriller." —*The Freethinker* (UK).

BEWARE THE ATTIC OF THE MIND. *Attic Access*, a novel. Go to www.atticaccess.net.

WAYWARD BRAHMIN: *Tale of Sexual Lust, Philosophy, Space-time, and a Man's Search for Meaning.* Order: Amazon.com.

AMERICA'S DARKSIDE: *The Changing Nature of Racial and Ethnic Violence in United States History, 1492 to the Present.* Order from Amazon.com or bn.com.

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RETHINKING RADICALISM: *How to Dismantle the Religious Right.* Excerpt/Order: www.rethinkingradicalism.com. Also at Amazon.

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DR. VITTORIA REPETTO, CHIROPRACTOR. Applied kinesiologist, manipulation, muscle-balancing, organ energy, cranial, sacral & acu-point work. One-hour sessions. (212) 431-3724, www.drvittoriarepetto.meta-ehealth.com.

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CHICAGO PSYCHOTHERAPIST: TREAT depression, anxiety, relationship problems, etc. Specialize in concerns of artists and academics. Sliding scale, insurance. Deborah Hellerstein, LCSW, (312) 409-9516.

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FILM

WHAT'S WRONG WITH THIS PICTURE? www.melspassion.org.

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VEGETARIAN DINING. FEMINIST POLITICS: 27 delicious years of success, 10% off with ad. Call (203) 576-9168 or go to www.bloodroot.com.

LIBERAL LIAISONS

THE RIGHT STUFF: Date fellow graduates and faculty of the Ivies, Seven Sisters, Stanford, UCB, University of Chicago, Northwestern and others. More than 4,000 members. See www.rightstuffdating.com, (800) 988-5288.

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EROTIC ADULT PHONE CONVERSATION with sensual, intelligent women. Any topic welcome! VISA/MC/AMEX. Call (888) 495-8255.

FETISHES AND FANTASIES fulfilled. Hot erotic talk with creative, sensuous woman. No limits. Personal, confidential. Call (866) 844-8286.

EROTIC VACATIONS with private introductions to friendly, beautiful, women. Bendrick International Men's Vacation Club. www.bendricks.com.

SWF, THOUGHTFUL, CARING, LEFTY (from the days when left was voting for Adlai Stevenson, not Bill Clinton), hoping for someone to spend time with over a glass of wine, dinner, the theater...Not a big deal. Just a nice time. Reply to Nation Box 387, 33 Irving Place, New York, NY 10003.

TRAVELED MANHATTAN WOMAN who reinvents herself every twenty years is now embarking on her final go-around! Join me in laughter, wisdom, doubts and hope and, to boot, let us connive in this election year to put a hex on the "Crude-Oil Cowboy." Reply to Nation Box 390, 33 Irving Place, New York, NY 10003.

TEXAS INMATE: Liberal, lonely, 51 years old, divorced white male, 6' tall, 250 lbs., brown hair, hazel eyes, nonsmoker, non–drug user, healthy, MA in humanities (Univ. of Houston), imminent release possible, seeks intelligent correspondence with liberal-minded women of similar age. Reply to Nation Box 392, 33 Irving Place, New York, NY 10003.

WANTED: OLDER WOMAN FOR CHERISHING, must be attractive, trim, lively. Go to www.Match.com, click "Search," enter username Puckaluck. Reply including photos to Nation Box 394, 33 Irving Place, New York, NY 10003.

WITTY, PRETTY COLLEGE PROFESSOR desires athletic, passionate, justice-oriented man (50s), outdoors freak. Central Mass. Reply to Nation Box 395, 33 Irving Place, New York, NY 10003.

If responding to a Nation Box number, send replies to: Nation Box ___, The Nation, 33 Irving Place, New York, NY 10003.

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FREE HERETIC'S BIBLE (941) 575-1405.

BUMPER STICKER, $2: L. Hahn, Apt. 234, 1000 Applewood Dr., Roswell, GA 30076.

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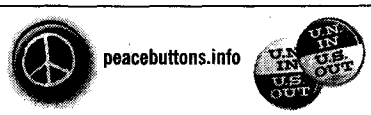
GIVE BUSH THE BOOT! Get (or give) a Bush Doormat today! www.BUSHDOORMAT.com.



ORGANIZATIONS

EXPLORE HUMANISM. See www.AmericanHumanist.org; call (866) HUMANISM.

PLEASANTON/LIVERMORE/DUBLIN, CA, area *Nation* discussion group forming. Call John at (925) 462-6815 or e-mail supervalue10@aol.com.

ORGANIZATIONS

WESTERLY, RI, *NATION* DISCUSSION GROUP FORMING. Call Patricia at (401) 596-9341 or e-mail fineco@riconnect.com.

DENTON, TX, *NATION* DISCUSSION GROUP is forming. Contact John at (940) 498-4486 for more information.

MANCHESTER, CT, *NATION* DISCUSSION GROUP forming. Call Gary at (860) 498-4486 after 6:30 PM. Planning to meet on the last Sunday of every month.

ST. LOUIS AREA *NATION* DISCUSSION GROUP NOW forming. Please contact Mary at (314) 352-5155.

SAN JOSE, CA, *NATION* DISCUSSION GROUP meeting regularly. Please contact Lawrence Bryan for further information. Call (408) 294-1073 or e-mail sjnation@yahoogroups.com.

WHEELING, WV, *NATION* STUDY GROUP FORMING: This ad is legitimate and not a joke. Contact Dianne Burnham, (304) 232-0590.

CULVER CITY, CA, *NATION* DISCUSSION GROUP meets on the 3rd Sunday of every month, 3–5 PM. For more information call Dorothy Gilden at (310) 391-0068.

WASHINGTON, DC, *NATION* DISCUSSION GROUP meets third Saturday of the month at 3–5 PM. We invite new members. For more information call Frances Pasmanick at (202) 363-0278, e-mail fpasmanick@juno.com.

BRADENTON/SARASOTA *NATION* DISCUSSION GROUP is meeting monthly. Please call (941) 761-4873 for time and place.

JOIN THE TAMPA BAY AREA *NATION* DISCUSSION GROUP. Contact ehombord@tampabay.rr.com or call (727) 895-0208.

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SAN FRANCISCO PSYCHOTHERAPIST treats depression, relationship issues, anxiety, crises. Consultation available. Sliding scale. Paula Holt, LCSW, (415) 289-6990.

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WEBSITE

HILARIOUS, BITING satirical letters to Bush, Cheney, Mel Gibson et al. Regular updates. www.paulchasman.com.

THE REAL DEAL? Untouched by the Carlyle Group, Halliburton, Bechtel, White House, House of Bush and House of Saud. Straightforward talk at the independent, Washington, DC–based, WWW.SAUDIPOLITICS.COM.

WWW.OLDTOWNREVIEW.COM: *"If this is indeed the path one chooses, let's at least get it out in the open."*

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Buy 10 runs, pay $3.00 per word
Buy 24 runs, pay $2.75 per word
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Attach ad, typewritten if possible.

The Nation, Classified Department, 33 Irving Place, New York, NY 10003

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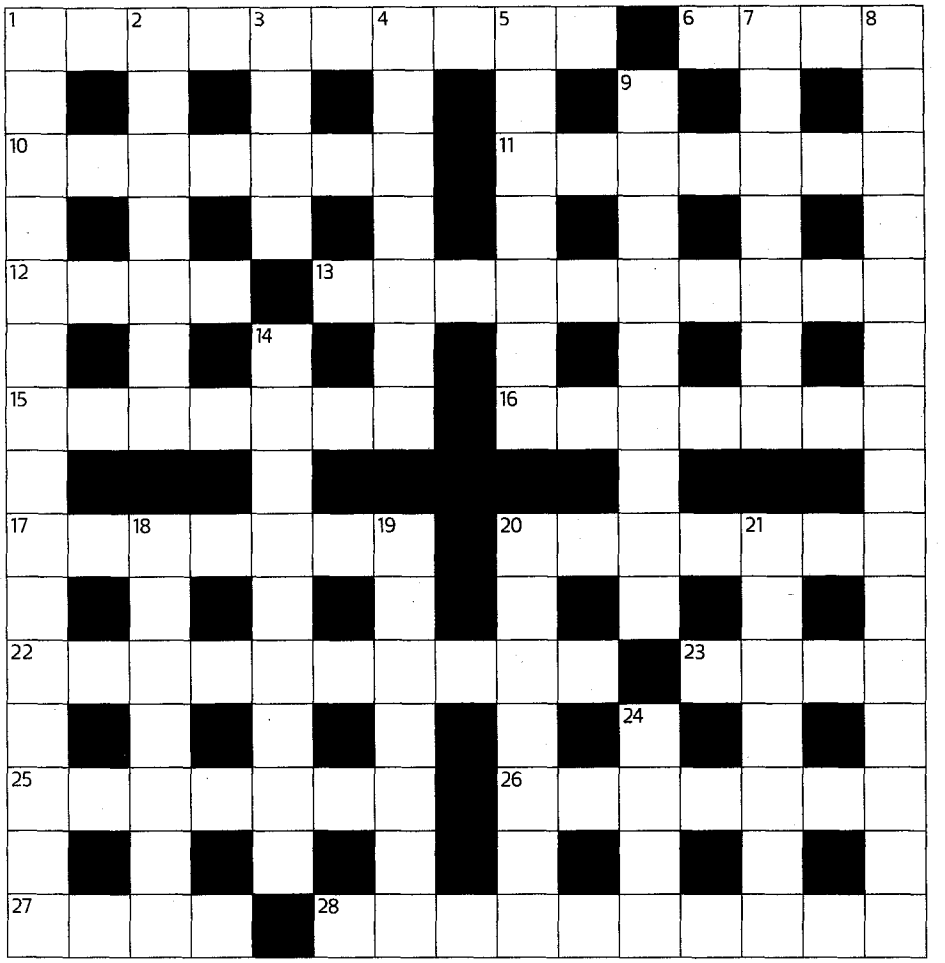
PUZZLE NO. 2938

FRANK W. LEWIS



ACROSS

1 The thing that was necessary to connect part of the island chain could also fill a gap at the mouth. (9)

6 Mulligan perhaps sprinkles water the wrong way. (4)

10 Perhaps college makeup, etc., laid out this way. (7)

11 The wrong door takes a worker to what should be rather smelly. (7)

12 Cheese obviously made the wrong way. (4)

13 A telegram full of nasty implications, the point of such being to protect property. (6,4)

15 Where someone used to ride shotgun, playing to the audience. (2,5)

16 Singularly, perhaps a transport to the sister of Charybdis, one hears, but they are just a matter of course, as Billy figured out. (7)

17 Not quite full monks, the Old Boys are about to be tardy. (7)

20 What the cannibals dined on, as they said, to have a craving with pork. (4,3)

22 People in with a soldier sit back to see what seriously incapacitates some. (10)

23 You won't see such written as a testing procedure for all to see! (4)

25 Variety of peas with a different color, as asparagus is. (7)

26 The control is found inside. (7)

27 and **28** A good skater shouldn't do this to show off! Failures do! (3,1,4,6)

DOWN

1 Obviously one isn't wedded to his art! (8,2,5)

2 Possibly retains the way the town crier might be found. (2,5)

3 Wanders about, and this by finishing might sound like a great literary figure. (4)

4 First class type under what might be a wailing type, as a Scottish hero. (7)

5 One who does 27 and 28 would have to improve to make this, when Homer possibly loses a point to have such transport. (7)

7 A royal bride for such as Sinatra, being confused by it. (7)

8 Leaves dried up, with such a look? (Humor her, in getting a child's horse and a spear to go with it.) (9,6)

9 A prisoner meting out what might be equivalent to "I'm sorry!" (9)

14 Such as pins and zippers show awful fears when sent the wrong way inside. (9)

18 Allow a sort of 9 inside, being the type who might allow a lot more. (7)

19 Old-fashioned way to leave, once associated with 23. (7)

20 A fish fork is let loose with some hesitation. (7)

21 Certainly not an early arriver, but perhaps raven up to no good! (7)

24 A ripe sort might go with a Peer to be with Iolanthe. (4)

PUZZLED? No more cross words. If you don't see why "Lures" are "Ground Rules" send for those of Mr. Lewis to: Puzzled, The Nation, 33 Irving Place, New York, NY 10003, or access our website at www.thenation.com/about/crossword.mhtml.

SOLUTION TO PUZZLE NO. 2937

	S	T	R	A	I	G	H	T	M	A	N			
M		E		T		O		O		T		E		
T	E	L	L		T	A	L	E	S		O	W	L	S
	D		E		I		D		S		M		P	
P	A	U	P	E	R	S		T	U	E	S	D	A	Y
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A	S	G	O	O	D	A	S		S	C	H	O	O	L
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	L				E		R		R		I		N	
P	A	L	M	I	S	T		F	O	R	T	I	F	Y
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		D	I	R	E	C	T	O	R	I	E	S		

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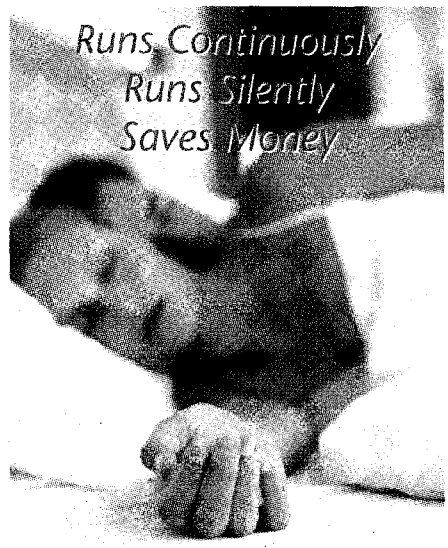

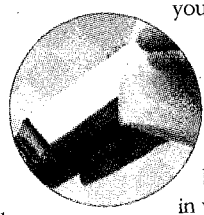

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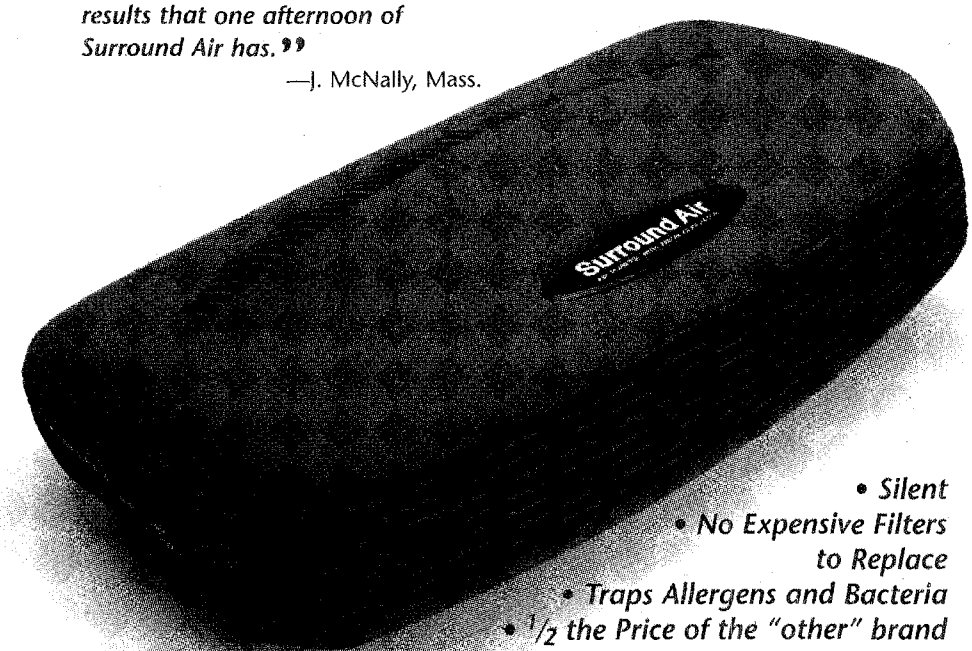

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